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THE

MADRAS LAW JOURNAL

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MATRIMONIAL RELIEFS UNDER THE HINDU MARRIAGE ACT AND THEIR OPERATION

By

PROF. S. VENKATARAMAN.

Marriage is the very foundation of civil society and no part of the laws and institutions of a country can be of more vital importance to its citizens than those which regulate the manner and conditions of forming, and, where necessary of dissolving the tie. The remedies provided by law in relation to conjugal rights and duties are compendiously referred to as matrimonial reliefs. The nature and scope of the reliefs available necessarily depend on the concept of marriage in a particular civilisation or community, whether it is essentially a matter of religion or a matter of agreement. Four types of matrimonial reliefs are well-known. These are by way of (*i*) restitution of conjugal rights, (*ii*) judicial separation, (*iii*) declaration of nullity of marriage, and (*iv*) dissolution of marriage. Among the Hindus, till recently, marriage was closely associated with religion and was regarded as a samskara or sacrament. Yet for a fairly long period of time, in fact ever since the British took over the administration of justice, relief by way of restitution of conjugal rights has been available from the Courts. Judicial separation as such was an unfamiliar relief, though in effect it resulted when one of the spouses had successfully resisted an action for restitution of conjugal rights. Declarations of nullity of marriages were also not unknown[1]. Divorce in the case of Hindu marriages, at the instance of a spouse, was not ordinarily available through Courts, though customary divorces were recognised, and it was also possible for a Hindu marriage being dissolved at the instance of one of the parties to the marriage becoming a convert to Christianity and thereafter initiating proceedings under the Native Converts Marriage Dissolution Act[2]. The Hindu Marriage Act of 1955 has provided for the grant of all the four aforementioned matrimonial reliefs in respect of a Hindu marriage whether solemnised before or after the passing of the Act. Section 9 provides for restitution of conjugal rights; section 10 for judicial separation; sections 11 and 12 for declaration of nullity of marriage, and section 13 for dissolution of marriage. In regard to the administration of these reliefs certain important directives have

1. *Rakeya Bibi* v. *Anil Kumar*, I.L.R. (1948) 2 Cal. 119; *Ratan Moni Debia* v. *Nagendra Narain Singh*, I.L.R. (1945) 1 Cal. 407.

2. Act XXI of 1866.

been laid down in the Act, which, in actual working have brought to light a number of important points.

Under section 11, a marriage may be declared to be null and void on a petition which may be presented by either of the parties to the marriage for any of the reasons specified therein. This provision has brought up the question whether it will be competent to a person other than a party to the marriage to file a petition for a declaration of nullity of the marriage. In *Lakshmi Ammal* v. *Ramaswami Naicker*[1], a person had, after the coming into force of the Hindu Marriage Act, married a second time during the subsistence of an earlier valid marriage. It was contended that inasmuch as the policy of the Act is to prevent polygamy and there is specific provision that in such cases the second marriage is void and illegal, valuable rights thereby accrue in favour of the first wife which should be capable of vindication in law inasmuch as for every right there should be a corresponding remedy as pointed out by Holt, C.J., in an *Anonymous* case[2] and that the first wife should be given the right to apply under section 11 as otherwise she may be left remediless. The contention was rejected. It was held that the summary remedy of an application under section 11 is available only to the very parties to the impugned marriage and to none else, and cannot be extended to a co-wife, co-husband, concubine, paramour, etc., on the ground that they also perform the same functions as the husband and wife, the parties to the second marriage. It was also held that though the first wife will have no *locus staudi* for claiming the cheap and summary remedy available under section 11, she can file a suit under the ordinary law to have the second marriage declared void and illegal, that such a remedy is always open to her, and hence it will not be correct to state that she would be left without a remedy in case she is not allowed to apply under section 11.

To prevent hasty divorces, section 14 lays down that it shall not be competent for any Court to entertain a petition for dissolution of marriage by a decree of divorce within less than three years of the marriage, provided, however, that the Court may grant leave for presentation of a petition for divorce within the period in cases of exceptional hardship to the petitioner or of exceptional depravity of the respondent. It is further provided by section 23(2) that before proceeding to grant any relief under the Act it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. This consideration is also to be kept in mind in dealing with an application for leave to present a petition for dissolution of the marriage within the three year limit, along with the interests of the children of the marriage. The provision in section 14 of the Hindu Marriage Act corresponds to section 2 (1) of the English Matrimonial Causes Act, 1950. Two questions of considerable interest have emerged in England on the language of the section, namely, firstly; what exactly the words 'exceptional hardship to the petitioner' signify; and, secondly, whether the question is to be decided objectively or subjectively. The decision in *Bowman* v. *Bowman*[3], seems to favour an objective appraisal, and according to Denning, L.J., the words 'exceptional hardship to the petitioner' would cover cases like

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1. (1959) 1 M.L.J. 333.
2. 6 Mod. 27 : 87 E.R. 791.
3. (1949) P. 358 : (1949) 2 All E.R. 127.

(*a*) adultery plus desertion by the husband in favour of another woman, (*b*) adultery plus cruelty of the wife, (*c*) adultery resulting in the birth of a child to the wife, (*d*) promiscuous and indiscriminate adultery, and (*e*) cruelty accompanied by drunkenness or coupled with perverted lust. A later decision of the Court of Appeal in *Hillier* v. *Hillier and Latham*[1] indicates a somewhat different approach and outlook. In that case, the parties had married on March 24, 1956. In November of that very year the wife left the husband and was vacillating in her intention to return to him. This occasioned distress to the husband leading to a break-down in his health. In the course of the year 1957, the wife met the co-respondent and committed adultery with him resulting in pregnancy. According to a medical certificate filed in the case the birth of her child was expected to take place round about May 5, 1958. The wife stated that she loved the co-respondent, continued to live with him, and wanted to marry him, and there was no probability of her returning to her husband. In those circumstances, the husband presented an application for leave to petition for divorce within three years of the marriage on the ground of exceptional hardship to him. Wrangham, J., refused his request as according to him adultery plus pregnancy did not constitute 'exceptional hardship' since the conception of a child is a reasonably normal result of adultery and is not so far removed from the ordinary that it *ipso facto* converted the hardship of having an adulterous wife into a case of exceptional hardship. In reaching the conclusion the learned Judge had viewed the matter wholly objectively. An appeal from his decision was preferred to the Court of Appeal, and fresh evidence was admitted in that Court showing that the husband's suffering was such that, if continued, it would lead to serious injury to his health. The Court of Appeal allowed the appeal and gave leave to the husband to present his petition for divorce within three years of the marriage on the ground of exceptional hardship. The Court held that though the mere fact that conception follows on an act of adultery within three years of the marriage does not constitute in itself 'exceptional hardship' for purposes of the Act, the suffering in health of the husband could not be ignored but should be taken into account. While Hodson, L.J., thought that the Court should not confine itself to an objective view as how the ordinary man might be expected to react in given circumstances, Romer, L.J., was emphatic and laid down that each case should be approached subjectively, and that the words 'exceptional hardship' were directed to a considerable extent if not primarily, to the possibility or probability of exceptional hardship suffered in the future by the petitioner if he had to wait the full period of three years before he can present his petition. The suggestion that the approach in each case should be subjective and not objective has much to commend it. The view of the Court of Appeal concerning adultery resulting in pregnancy for purposes of the section, however consistent it may be with the British outlook in regard to such matters, may not carry appeal with the Hindus who have been brought up in different traditions and social conditions. Among the Hindus adultery resulting in pregnancy is regarded as graver than mere adultery. To go therefore by the principles enunciated by the English decisions in regard to the construction of the words 'exceptional hardship' in section 14 of the Hindu Marriage Act will not be warranted or salutary. The judicial mind should not be clogged by a construction which alien conditions may justify but should be free to consider the ques-

1. (1958) 2 All E.R. 261.

tion from the Hindu point of view. The decision in *Meganatha* v. *Susheela*[1], may well have emphasised the need for a subjective appraisal. Another point of interest brought out in *Hillier's case*[2] may be of value in the construction of section 14, namely, that the reference to the interests of the children of the marriage in the section should be understood as a reference to the interests of the children born to the actual parties to the marriage and not as covering those of a child born to the wife as a result of her adultery.

Under section 24 the Hindu Marriage Act makes provision for grant of maintenance *pendente lite* and expenses of proceedings to either spouse, and section 25 contains similar provisions regarding payment of permanent alimony and maintenance. It is a question of some nicety whether the benefit of section 24 can be had by the husband or wife only where such person is the applicant for the matrimonial relief and in no other case. It has been held that it need not be so, that provision for maintenance *pendente lite* may be made in favour of a needy spouse irrespective of whether such spouse appeared as the initiator of the main proceedings or not, that the husband and wife are placed on the same footing under the section and that the section permits such relief being awarded against the wife also, *Nanjappa* v. *Vimala Devi*[3], *Kamala* v. *Shama Rupchand*[4], *Annapurnamma* v. *Ramakrishna Sastry*[5].

Section 29 (2) of the Hindu Marriage Act enacts that nothing in the Act shall affect any right of divorce recognised by custom or conferred by special enactment whether the marriage had been solemnised before or after the commencement of the Act, indicating thereby that the *prima facie* object of the Act is to save divorce rights in operation earlier either by reason of custom or of special legislation. Apropos this matter, a somewhat anomalous situation had resulted in Bombay. Section 30 has repealed various enactments including the Bombay Divorce Act, 1947, under which desertion for a continuous period of four years would be a ground for divorce. Sections 30 and 29 (2) read together show that the Legislature wanted to save the rights of divorce granted to the parties under those laws which had not been repealed by section 30. In asmuch as the Bombay Hindu Divorce Act happens to be one of the repealed laws it must necessarily follow that the right of divorce arising under that enactment is not preserved. Nevertheless a large number of divorce decrees had been passed in Bombay on the basis that divorce could still be obtained on the ground of desertion under the Bombay Act despite its repeal. In *Sitabai Ramchandra Todankar* v. *Ramchandra Raghunath Todankar*[6], a Full Bench of the Bombay High Court has drawn attention to the situation and suggested that it was a proper case for the Legislature to pass a validating Act.

Apart from the legal problems that have been thrown up in the operation of the matrimonial reliefs under the Hindu Marriage Act, a more important matter for investigation is the extent to which the reliefs are being availed of, the class of persons who seek assistance and the effect of its impact upon Hindu family life. A pilot survey, as it were, was undertaken when the Act had been in operation for about three years, in May, 1958, by the Faculty of Law of the Andhra University. Three years' time is certainly too short a period to undertake such a study but it was felt that the early reaction to the provisions of the Act may be a pointer to the effect of the re-orientation of the Hindu marriage laws. Two districts, Visakhapatnam

1. A.I.R. 1957 Mad. 423.
2. (1958) 2 All E.R. 261.
3. A.I.R. 1957 Mys. 44.
4. A.I.R. 1958 Bom. 466.
5. (1958) 2 An.W.R. 382.
6. A.I.R. (1958) Bom. 116 (F.B.).

and West Godavari were selected for the purpose, the former as a district with large areas economically and culturally backward and the latter as typical of a relatively more prosperous and educationally advanced area. Through the courtesy of the judicial officers information on the basis of a questionnaire carefully prepared could be obtained. The information collated and arranged is given hereunder :

Question 1.—In how many cases did the Court acting under section 6 (5) prohibit by injunction an intended marriage in the interest of the bride, for whose marriage consent was required, during the years 1955-56, 1956-57, 1957-58?

Answer:

District Court,	Visakhapatnam	.. nil
Sub-Court,	Visakhapatnam	.. nil
Sub-Court,	Srikakulam	.. nil
District Court,	Eluru	.. nil
Sub-Court,	Eluru	.. nil
Sub-Court,	Narasapur	.. nil

Question 2.—How many petitions for restitution of conjugal rights were filed under section 9 by (i) the husband, (ii) the wife, during the years 1955-56, 1956-57, 1957-58?

Answer :		*By husband.*	*By wife.*
District Court, Visakhapatnam ..	1955	8	1
	1956	38	2
	1957	34	1
	1958 till April 26	7	nil
Sub-Court, Visakhapatnam ..	1957—58	3	nil
Sub-Court, Srikakulam ..	1955—56	26	nil
	1956—57	42	3
District Court, Eluru ..	1957—58	1	1
Sub-Court, Eluru ..	1957—58	1	nil
Sub-Court, Narasapur ..	1955—56	7	nil
	1956—57	17	3
	1957—58	10	nil

Question 3.—How many petitions for judicial separation were filed during 1955-56, 1956-57, 1957-58 under section 10, by (i) the husband, (ii) the wife, on the ground of the respondent's (*a*) desertion, (*b*) cruelty, (*c*) suffering from virulent leprosy, (*d*) suffering from venereal disease, (*e*) suffering from unsoundness of mind, and (*f*) having had sexual intercourse with a person other than his or her spouse?

Answer : District Court, Visakhapatnam

		Grounds.					
		a	b	c	d	e	f
1955	Husband	5	..	..	..	..	..
	Wife	..	..	..	..	..	..
1956	Husband	7	..	..	..	1	..
	Wife	..	..	..	..	..	..
1957	Husband	6	1	1	..	..	..
	Wife	..	..	..	..	..	..
1958	Husband	1	..	..	..	..	..
	Wife	..	..	..	..	..	..

		Grounds.					
Sub-Court, Visakhapatnam							
1958	Husband	1	..	..	..	..	..
	Wife	..	..	..	..	..	..
Sub-Court, Srikakulam							
1955-56	Husband	8	..	..	..	..	..
	Wife	4	1	..	..	..	..
1956-57	Husband	6	..	..	..	..	..
	Wife	5	..	..	..	..	..
1957-58	Husband	4	..	1	..	2	..
	Wife	1	1	..	..	..	..
District Court, Eluru							
1955-56	Husband	..	..	..	..	..	..
	Wife	..	..	..	..	..	..
1956-57	Husband	..	..	..	..	..	..
	Wife	..	..	..	..	..	..
1957-58	Husband	1	..	..	..	..	..
	Wife	..	..	..	..	..	..
Sub-Court, Eluru							
1955-56	Husband	..	..	..	..	..	2
	Wife	..	..	..	..	1	..
1956-57	Husband	5	..	..	..	..	..
	Wife	..	..	..	..	..	..
1957-58	Husband	..	..	..	..	..	..
	Wife	..	..	..	..	..	..
Sub-Court, Narasapur							
1955-56	Husband	4	..	..	..	..	1
	Wife	3	..	..	..	..	..
1956-57	Husband	9	1	..	..	..	..
	Wife	1	..	..	..	..	..
1957-58	Husband	6	..	..	..	..	..
	Wife	1	..	..	..	..	..

Question 4 : In how many cases were the prayers granted in the above cases ?

Answer :

	1955-56	1956-57	1957-58
District Court, Visakhapatnam	1	4	1
Sub-Court, Visakhapatnam	..	..	..
Sub-Court, Srikakulam	3	3	..
District Court, Eluru	..	..	..
Sub-Court, Eluru	2	5	..
Sub-Court, Narasapur	4	4	2

Question 5 : In how many of the cases under section 10 had the marriages been solemnised before the passing of the Act and in how many cases after its passing ?

Answer : District Court, Visakhapatnam : Before 22 After 0

	Before	After
1955	5	
1956	8	
1957	8	
1958	1	
Sub-Court, Visakhapatnam		
1955 to 1958	1	0
Sub-Court, Srikakulam		
1955 to 1958	32	1
District Court, Eluru		
1955 to 1958	0	0

Sub-Court, Eluru

1955 to 1958 8 0

Sub-Court, Narasapur

1955 to 1958 8 0

Question 6 : How many petitions for decree of nullity of marriage under section 11 were presented during the years 1955-56, 1956-57, and 1957-58, by (i) the husband, (ii) the wife, on the ground that (*a*) the respondent had a spouse living at the time of the marriage, (*b*) the parties were within the degrees of prohibited relationship, (*c*) the parties were sapindas of each other ?

Answer : None.

Question 7 : How many petitions for decree of nullity under section 12 were presented during the years 1955-56, 1956-57, and 1957-58 in respect of marriages contracted (*a*) before the Act, (*b*) after the Act, by (1) the husband, (2) the wife, on the ground of (*a*) impotency of the respondent, (*b*) lunacy or idiocy of the respondent at the time of the marriage, (*c*) consent of the petitioner or consent of the guardian where required under section 5 having been procured by force or fraud, (*d*) the respondent being pregnant by a person other than the petitioner at the time of the marriage ?

Answer : All the marriages in respect of which relief was applied for were marriages solemnised before the Act, according to all the Courts. As to other details,

District Court, Visakhapatnam

1955 by	Husband	nil
	Wife	1 (ground a)
1956 by	Husband	3 (ground a)
	Wife	nil
1957 by	Husband	..
1957	Wife	..
1958 by	Husband	..
	Wife	..

Sub-Court, Visakhapatnam,

1955 to 1958		nil

Sub-Court, Srikakulam

1955 to 1956 by	Husband	2 (ground a 1 and ground b 1)
	Wife	nil
1956 to 1957 by	Husband	1 (ground b)
	Wife	nil
1957 to 1958 by	Husband	1 (ground a)
	Wife	1 (ground a)

District Court, Eluru.

1955 to 1958		nil

Sub-Court, Eluru nil

Sub-Court, Narasapur

1956 to 1957 by	Husband	1 (ground a)
	Wife	1 (ground a)
1957 to 1958	Husband	1 (ground a)

Question 8 : How many petitions were presented during the years 1955-56, 1956-57, and 1957-58 by (i) the husband, (ii) the wife, for divorce under section 13 on the ground of the other party (*a*) living in adultery, (*b*) ceasing to be a Hindu by conversion to another religion, (*c*) being of unsound mind, (*d*) suffering from leprosy, (*e*) suffering from venereal disease, (*f*) renouncing the world by entering a religious

order, (*g*) not being heard of as alive for a period of seven years or more, (*h*) not resuming cohabitation for two years or upwards after the passing of a decree for judicial separation against that party, (i) failing to comply with a decree for restitution of conjugal rights for two years and upwards since the passing of the decree ?

Answer :

Court	Year	By	a	b	c	d	e	f	g	h	i
District Court, Visakhapatnam											
	1955 by	Husband	..	..	1	..	..	..	..	..	..
		Wife	..	..	..	1	..	..	..	..	..
	1956 by	Husband	6	1	..	..	..	..	..	..	..
		Wife	1	..	..	..	..	..	..	..	..
	1957 by	Husband	6	..	..	1	..	..	..	..	..
		Wife	..	..	..	..	..	..	..	..	..
	1958 by	Husband	2	..	..	..	..	..	..	..	..
		Wife	..	..	..	..	..	..	..	..	..
Sub-Court, Visakhapatnam..nil.											
Sub-Court, Srikakulam											
	1955-56 by	Husband	..	1	..	..	..	..	..	..	..
		Wife	3	..	..	..	..	..	..	..	..
	1956-57 by	Husband	1	..	2	1	..	1	..	..	3
		Wife	1	..	..	3	..	..	..	..	..
	1957-58 by	Husband	3	..	..	..	..	..	..	..	1
		Wife	1	..	..	2	..	..	1	..	..
District Court Eluru											
	1957-58 by	Husband	2	..	..	..	..	..	..	..	..
		Wife	..	..	..	..	..	..	..	..	..
Sub-Court, Eluru											
	1956-57 by	Husband	2	..	..	..	..	..	..	..	..
		Wife	..	..	..	..	..	..	..	..	..
Sub-Court, Narasapur											
	1955-56 by	Husband	2	..	..	..	1	..	..	..	..
		Wife	1	..	..	..	2	..	..	..	..
	1956-57 by	Husband	2	..	..	..	..	..	..	..	1
		Wife	2	1	..	..	..	..	..	..	..
	1957-58 by	Husband	7	..	1	..	1	..	..	1	1
		Wife	..	..	1	..	2	..	..	..	..

Note : All the marriages had been solemnised before the passing of the Act.

Question : 9.—In how many cases were petitions presented during the years 1955-56, 1956-57 and 1957-58 by the wife under section 13 (2) for dissolution of her marriage on the ground of (*a*) the husband having married again before the commencement of the Act, (*b*) the husband being guilty of rape, sodomy or bestiality ?

Answer :

Court	Year	Cases
District Court, Visakhapatnam		nil
Sub-Court, Visakhapatnam		nil
Sub-Court, Srikakulam	1955-56	1
	1956-57	nil
	1957-58	2
District Court, Eluru		nil
Sub-Court, Eluru		nil
Sub-Court, Narasapur	1955-56	1
	1956-57	nil
	1957-58	1

Question 10 : In how many cases was permission applied for under section 14 during the years 1955-56, 1956-57 and 1957-58 by (*a*) the husband, (*b*) the wife, for filing petition for dissolution of marriage before the expiry of three years from the date of the marriage ? In how many cases was permission granted and in how many cases refused ? In how many cases was permission granted originally cancelled subsequently ?

Answer : According to all the Courts—nil.

Question 11 : In how many cases were the proceedings under the Act conducted *in camera* (*a*) at the request of the parties, (*b*) on the Court's own motion ?

Answer : According to the Srikakulam Sub-Court, in one case alone the proceedings were held *in camera* at the request of the parties in a wife's petition alleging impotency of the respondent. In the District Court, Eluru the procedure was used in five cases.

Question 12 : In how many cases of proceedings under the Act were attempts made by the Court under section 23 to bring about a reconciliation between the parties and with what measure of success ?

Answer : Attempts seem to have been made in all the cases. In the District Court, Visakhapatnam the attempts seem to have succeeded in about 16 cases out of 25. In Srikakulam Sub-Court, in 20 cases the attempts succeeded and in the District Court, Eluru, success attended the efforts in four cases.

Question 13 : In how many cases during the years 1955-56, 1956-57 and 1957-58 were orders passed under section 24 directing payment of maintenance *pendente lite* and expenses of proceedings (*a*) by the husband to the wife, (*b*) by the wife to the husband ?

Answer : According to all the Courts in no case was the wife directed to pay. According to the District Court, Visakhapatnam payment by the husband to the wife was ordered in 1956 in seven cases, in 1957 in eight cases and in 1955 in five cases. In Srikakulam such payment was ordered in 1955-56 in one case, in 1956-57 in four cases, and in 1957-58 in two cases. In the District Court, Eluru, it was ordered in two cases in 1957-58, and in Narasapur, it was ordered in one case in 1955-56, in eleven cases in 1956-57 and in four cases in 1957-58.

Question 14 : In how many cases during the years 1955-56, 1956-57, and 1957-58 were permanent maintenance and alimony ordered to be paid under section 25 by (*a*) the husband to the wife, (*b*) by the wife to the husband ?

Answer : In one case during 1956-57 such order for payment by the husband to the wife was made in Srikakulam. No orders were made by any of the other Courts.

Question 15 :—In how many cases during the years 1955-56, 1956-57, and 1957-58 were orders passed under section 26 for the custody of the children of the marriage and in what manner ?

Answer : In one case only in the District Court, Visakhapatnam, a petition was preferred by a father for the custody of a minor son but the application does not seem to have been pressed. No orders under the section fell to be passed by any of the other Courts.

Question 16 :—In how many cases during the years 1955-56, 1956-57, and 1957-58 were orders passed under section 27 for the disposal of property and in what manner ?

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Answer.—No order fell to be passed under the section in any of the Courts.

Certain features emerge clear from the survey. Men seem to have sought relief in larger numbers than women. The phenomenon may be due to the fact that the traditions and upbringing of Hindu women in the past have been such as to inculcate reverence towards the husband, and a spirit of tolerance of what he does. Temperamentally also Hindu women are averse to airing their grievances against their spouses in public. It may be also due to the fact that women feel a sense of handicap in the matter, of conducting litigations, particularly, at places often remote from their residence.

According to the remarks offered by the concerned judicial officers the persons seeking matrimonial relief seem to have been drawn mainly from the poorer classes and a few from the middle classes while there has been rarely any case from the richer classes. In Srikakulam the litigants were found to be economically backward and drawn from the ranks of cultivators. The women in such communities are also earning members and are not so much dependent on men as in other communities, and hence do not feel averse to get out of a matrimonial life that is proving unsatisfactory. In one case alone from Eluru, it was found that the husband was a Government servant and the wife a teacher.

In regard to the measure of success attending the efforts of the Court to reconcile the parties, the opinions given show a certain amount of variation. The Subordinate Judge at Visakhapatnam thought the procedure useful. The Subordinate Judge at Srikakulam stated that the attempts were generally successful ; the District Judge at Eluru referred to them as very often successful. The Subordinate Judge there however felt that the attempts were rarely successful while the Judge at Narasapur has opined that in about 10 per cent. of the cases the attempts have proved fruitful.

The main ground on which matrimonial relief has been generally sought is marital infidelity. Diseases form the next major ground. It may be that with increasing sophistication in Hindu society all the grounds set out in section 13 may come to be urged.

The *in camera* procedure does not seem to have been availed of much. This may be due to the fact that the classes who applied for relief in the past were economically and culturally backward. Similarly the possibility of a husband getting interim or permanent maintenance from the wife has not been exploited, showing that men still entertain a certain amount of delicacy in the matter. Probably the provision is in advance of the times.

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PROCEDURAL DUE PROCESS OR PROCEDURAL SAFEGUARDS AS A FUNDAMENTAL RIGHT IN THE CONSTITUTION*

By

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The Constituent Assembly of India, while conveniently avoiding using the word 'Due Process' either in providing safeguards for protecting substantive rights in the main body of the Constitution or providing for safeguards regarding procedural rights, nevertheless provided that the Constitution shall be carried under authority of law or procedure established by law.

In laying down standards by which yardstick the liberty or freedom of an individual, whether citizen or alien, is to be judged, and the safeguards provided for the protection of liberty of person and property, the Indian Constitution has virtually preserved the 'Due Process' clause of the American Constitution in regard to substantive and procedural rights of the citizen as well as the alien.

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In regard to Procedural Due Process, the Constitution has virtually provided, in the words of Weaver on "Constitutional Law," page 411, for an 'orderly proceeding according to established rules which do not violate fundamental rights, and a general law administered in its legal course according to the form of procedure suitable and proper to the nature of the case, conformable to the fundamental rules of right and affecting all persons alike in due process'. Notice, summons or other process, a hearing, granting an opportunity to be heard, and to defend in an orderly proceeding before a Court or other tribunal having jurisdiction of the cause and which renders 'judgment only after trial,' are some of the characteristics of Procedural Due Process. It may be a trial by Jury or by Court and proceedings to condemn land may be before special tribunals and notice of proceedings may be made by publication and notice of tax procedings may be given and opportunity given to be heard in tax proceedings. When there is excess of due process, *i.e.,* when there is need to enact measures to relieve the needs, social, political and economic, in society *i.e.,* to achieve social justice, the doctrine of 'Police power' was evolved in public interest in order to regulate private rights. (*Patanjali Sastri, J.,* in *Gopalan* v. *State of Madras.*[1])

There is evidence of both Due Process as well as 'Police power' in the chapter on Fundamental Rights in the Indian Constitution and the two sets of rights are kept balancing each other.

The Constituent Assembly of India wanted to provide not merely substantive safeguards in the Constitution to see that the executive did not misuse the discretion conferred on them in the matter of dealing with the property, life and liberty of any person in India but made provision for a duty on the part of the executive to lay down certain standards or rules of procedure in dealing with them and to observe them. While some of the provisions relating to fundamental rights apply only to citizens, such as Articles 15, 16, 19, 29, 30, the other provisions of Part III of the Constitution apply to citizens and foreigners alike, to all persons residing in the

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1. (1950) S.C.J. 174 : (1950) 2 M.L.J. 42 : A.I.R. 1950 S.C. 27, 73.

territory of India for the time being, and subject themselves to its jurisdiction, *e.g.*, the provision under Article 21 for the protection of the life and personal liberty of all persons, citizens and non-citizens.

Under Articles 12 and 13 of the Constitution, no law, rule, regulation, order or bye-law of any authority including both legislative and executive organs of the State can take away or abridge the rights conferred by Part III and all laws in force which are inconsistent with Part III before the commencement of the Constitution, shall be void to the extent of the inconsistency and therefore procedural as well as substantive laws which were pre-Constitution laws are not void *ab initio* but void only regarding future exercise of the fundamental right. Article 13 (1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book, for, to do so will be to give them retrospective operation which, we said, we do not possess, *Keshavan* v. *State of Bombay*[2]. It seems clear that an existing statute in spite of the declaration by Court that it is void, remains in force till 25th January, 1950 and continues to remain on the statute book even after 26th January, 1950, except that no effect can be given to any of its provisions which are repugnant to the fundamental rights guaranteed by the Constitution.

The guarantee under Article 13 therefore, is only prospective and not retrospective and the inconsistency referred to in Article 13 (1) does not affect transactions closed before the commencement of the Constitution. But nevertheless an unconstitutional procedure need not necesssarily be followed in respect of pending proceedings or in regard to proceedings started after the commencement of the Constitution, though the procedure laid down in a pre-Constitution Act, especially when that procedure is discriminatory and conflicts with a fundamental rght as the right of equal protection under Article 14, *Lachmandas* v. *State of Bombay*[3]. The procedure to be followed in a case which arose before the commencement of the Constitution, even though that law was valid before, must conform to the principles of the Constitution, and the prosecution for the offence after the Constitution came into being, can take place only under a procedure valid under the provisions of the Constitution.

But all post-Constitution rules, orders or bye-laws, must not only not be repugnant to the statute which authorised them, but must also be reasonable restrictions under Article 19 of the Indian Constitution. To this, proceedings under Articles 21 and 22 are exceptions, as in the words of the majority judgment of the Supreme Court in *Gopalan's case.*[3-a] Article 21 is an independent Article, and has no relation to 'reasonable restriction' provided in Article 19. This view has been subsequently upheld in the later case of *Ramsingh* v. *State of Delhi.*[4]

Article 19 mentions the seven freedoms which are the fundamental rights of every citizen of India which come generally under the term 'Liberty'; but Article 21 speaks of deprivation of life or of personal liberty which cannot be done except according to procedure established by law. The word 'due process of law' has been omitted. The object of Article 21 is to serve as a restraint upon the executive so that it may not proceed against the life or personal liberty of the individual except under the authority of some law and

2. (1951) S.C.J. 182 : (1951) I M.L.J. 370 : (1951) S.C.R. 228.

3. (1952) S.C.J. 339 : A.I.R. 1952 S.C. 235 (245 *Das, J.*).

3-a. (1950) S.C.J. 174 : (1950) 2 M.L.J. 42 : A.I.R. S.C. 27.

4. (1951) S.C.J. 374 : A.I.R. 1951 S.C. 270.

in conformity with Article 22. Article 21 of the Constitution read with Article 22, exhaustively deals wih the deprivation of life or personal liberty, as distinguished from 'restriction' of the right of movement freely througout the territory of India, which is dealt with in Article 19 (1) (*d*) and (5). *Gopalan* v. *State of Madras.*[4-a]

The Constitution does not guarantee the right to any particular procedure for the deprivation of life or personal liberty, besides those contained in Article 22. The legislature is free to lay down any procedure within the ambit of the legislative power conferred by Entry 2 of List III (Criminal Procedure) subject, of course, to the limitations prescribed in Articles 14, 20 and 22. The Courts have no power to invalidate a legislation on the ground that the procedure laid down therein is arbitrary, but the Supreme Court of India has interfered in cases where the rules of procedure laid down in the statutes under which the executive act, are not strictly followed by them. *Makham Singh* v. *State of Punjab*;[5] *Naranjan* v. *State of Punjab*[6]. The Court has the power to see if the Rules are followed and exercised in good faith. The Court has the right to interfere, where a person is deprived of liberty otherwise than according to procedure established by law. This principle has been applied both in cases of punitive as well as preventive detention. *Ram Narayan* v. *State of Delhi*[7], *Maqbul Hussain* v. *State of Bombay*[8], *State of Bombay* v. *Atmaram.*[9]

Articles 21 and 22 are qualifications on the right of freedom conferred under Article 19. Once a man's liberty is lawfully deprived under Article 21 or Article 22, he loses his capacity to exercise his freedom under Article 19, and cannot complain that his rights have been taken away, *Gopalan* v. *State of Madras*[4-a]; *State of West Bengal* v. *Subodh Gopal*[10-11]. The procedure laid down in Articles 21 and 22 has to be strictly followed.

The Courts in India have insisted on certain procedural safeguards being inserted in the legislation intended to be implemented by the executive, before declaring that the executive have constitutionally exercised the discretion with which they have been invested. The Fundamental Rights have afforded a basis to the judiciary to determine whether both substantive and procedural safeguards have been inserted in the legislation that the executive is expected to enforce. The substantive part is examined to see whether the discretion conferred is within prescribed limits. The Procedural part is examined to find out whether there are necessary safeguards subject to which the executive or the administrator are expected to exercise their discretion. *Dr. Khare* v. *State of Delhi.*[12]

In *Virendra* v. *The State of Punjab*,[13-14] the Supreme Court in a question arising under Article 19 (1-A) and (2) (Freedom of Speech,) held that the executive must be given discretion to curtail freedom of speech on condition that the principle on which the executive exercised its power should be laid down by the Legislature, and that it should be limited in point of time, *i.e.*, of short duration, and that the person aggrieved should have a rihgt of making representation for the consideration of the executive. The Allaha-

4-a. 1950 S.C.J. 174 : (1950) 2 M.L.J. 42 : A.I.R. 1950 S.C. 27.
5. 1951 S.C.J. 835.
6. (1952) S.C.J. 111 : (1952) 1 M.L.J. 733 : (1952) S.C.R. 395.
7. (1953) S.C.J. 326 : (1953) S.C.A. 399.
8. (1953) S.C.J. 456 : (1953) 2 M.L.J. 113 : (1953) S.C.R. 730.
9. (1950-51) S.C.C. 130 : 1950 S.C.J. 208.
10-11. (1954) S.C.J. 127 : 1954 S.C.A. 65.
12. (1950) S.C.J. 328 : A.I.R. 1950 (S.C.) 211 : (1950) S.C.R. 519.
13-14. A.I.R. 1957 (S.C.) 696.

bad High Court in the case of *State of Babooli*[15] held that the Dramatic Performances Act of 1876 was bad, because its procedural part imposed such restrictions on fundamental rights which were opposed to Article 19 (2).

In the case of *Ebrahim Vazir* v. *Bombay*,[16] the Supreme Court of India held "that section 7 of the Act which empowered the Government to remove any person from India who was suspected to commit the offence, was *ultra vires*, Section 19 (1) (*e*) and 19 (*s*) as the procedural formality of issuing a previous notice regarding the suspicion, in order that he may rebut it, or an opportunity given to him for clearing the suspicion was not given to him, which is a travesty of the right of citizenship."

In the case of *Khare* v. *Delhi*,[17] the Supreme Court, while holding that the order of externment was valid, was of the view that if the order of externment was for a longer duration, there was necessity for more procedural safeguards, such as service of the grounds of externment and giving him an opportunity to make representations and consideration of the material by an Advisory Board.

The necessity for having procedural safeguards, was stressed by the Supreme Court as an essential aspect of legislation giving wide powers of discretion to the executive in the matter of externment in the cases of *Gurbachan* v. *Bombay*,[17-a] *Bajbai* v. *District Magistrate*,[17-b] and *Hari* v. *Deputy Commissioner of Police*.[18]

In *Bijoy Cotton Mills* v. *Ajmer*,[19] the Supreme Cocrt held that the Minimum Wages Act contained sufficient procedural safeguards such as the Government's obligation to accept the recommendations of the Advisory Committees or Boards consisting of the representatives of the employers and employees and representation of persons affected, and the existence of the Central Advisory Board to advise the Centre and the States.

The Supreme Court in *Dwarka Prasad* v. *The State of Uttar Pradesh*,[20] held, that sufficient procedural safeguards in the matter of licencing at the discretion of the executive should be provided and that there should be provision for a right of appeal or revision.

In *Pannalal Bag* v. *Union of India*,[21] the Supreme Court laid down that Income-tax authorities should give notice to the party affected and afford him a reasonable opportunity to represent his case, and provide for reducing into writing the reasons for ordering his transfer.

It cannot be held as an inflexible rule, that every law which gives authority to the executive to encroach on fundamental right, must necessarily give an opportunity to the person concerned to be heard before an order is made to his prejudice. The question will depend on the nature of the legislation and the extent to which the fundamental right is contravened.

In the case of a legislature dealing with urgent situations, like flood or earthquake or an epidemic, a provision for an elaborate enquiry may not necessarily be made but in cases where there is no compelling urgency or necessity, the legislation should ordinarily prescribe a procedure observing

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15. A.I.R. 1956 All. 571.
16. (1954) S.C.R. 933 : A.I.R. 1954 S.C. 229.
17. (1950) S.C.J. 328 : (1950) S.C.R. 519 : A.I.R. 1950 S.C. 211.
17-a. A.I.R. 1952 S.C. 222.
17-b. 1956 S.C.J. 565 : A.I.R. 1956 S.C. 585.
18. (1956) S.C.J. 599 : A.I.R. 1956 S.C. 759.
19. (1955) S.C.J. 51 : (1955) 1 M.L.J. (S.C.) 10 : A.I.R. 1955 S.C. 33 : (1955) S.C.R. 752.
20. (1954) S.C.J. 238 : (1954) S.C.R. 803.
21. A.I.R. 1957 (S.C.) 397 : (1957) S.C.R. 233.

the principles of natural justice, *Jayantilal* v. *State of Saurashtra*.[22]. The want of opportunity of being heard, the absence of a provision for appeal, and remedy in civil court have all been said to be unreasonable restrictions on fundamental right. *W. B. S. K. Co-operative Credit Society* v. *Bella*,[23] *Deodat Rai* v. *State*,[1] *Jeshugbhai* v. *State*,[2] In re *Shanta Bai*,[3] *Mulchand* v. *Mukand*,[4] *Annati Sadhe Khan* v. *A. K. Chatterjee*,[5] *Ismail* v. *State of Orissa*,[6] and *Tozmal* v. *Government of West Bengal*,[7] it was held that provision for some procedure or tribunal for consideration of the representation that may be made by the person aggrieved is essential. The absence of such a provision would render the law unreasonable. It has been held in *Madanlal* v. *State*,[8] that although there may be a provision for making rules, so long as such rules are not made providing a reasonable procedure, the restrictions imposed will be bad.

While our Constitution does not guarantee the right to any particular procedure for the deprivation of life or liberty, besides those contained in Article 22, the legislature is left free to lay down any procedure within the ambit of its authority, and the legislature is free to create special criminal Courts for the trial of particular offences, but also empower the executive to decide what offences or classes of offences shall be tried by the special courts. There is under the Indian Constitution no guarantee of any right of trial in the ordinary courts of law or the right to access to the ordinary courts as in Switzerland, China, Japan and Germany, or as interpreted to mean by the term 'Due Process' by American Courts. But our Constitution does envisage, that Procedural Safeguards are a condition precedent to the preservation of the fundamental right of the citizen, and in the case of the life and liberty of the alien too.

MANAGING AGENCY SYSTEM UNDER COMPANIES ACT (I of 1956)

By

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When the Companies Act (I of 1956) was passed, containing a large number of stringent provisions, especially those relating to managing agents such as requiring the previous sanction or approval of the Central Government for such matters as appointment or re-appointment of managing agents, variation of the terms of the managing agency agreement, changes in the managing agency firm or corporation, limitation of their overall remuneration to ten per cent. of net profits, prohibition of receipt of commission as buying or selling agents and so on, a good many managing agents of companies felt uneasy over the new legislation and not a few who apprehended undue interference by Government into some of their ways and activities were visibly perturbed. Soon however under skilled advice and through a thorough grasp of the exact scope of the relevant provisions of the Act affecting their rights, remuneration and privileges they became inspired with new hopes, and scarcely before a year had elapsed after the coming into force of the Act, found themselves once again masters of the situation. In their new outlook they were also not a little encouraged by what I may call the phil-capitalist and friendly-to-the-managing-

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22. A.I.R. 1952 Sau. 59.
23. A.I.R. 1951 Cal. 111.
1. A.I.R. 1951 All. 718.
2. A.I.R. 1950 Bom. 363.
3. A.I.R. 1951 Bom. 337.
4. A.I.R. 1952 Bom. 296.
5. A.I.R. 1951 Cal. 90.
6. A.I.R. 1952 Orissa 986.
7. A.I.R. 1951 Cal. 322.
8. A.I.R. 1953 Raj. 162.

agency-system attitude exhibited by the Department of Company Law Administration as well as its zonal representative, the Regional Director of Companies, whose guidance and advice as regards the interpretation and application of the provisions of the Act would seem to have always been favourable to the interests of the managing agents *vis-a-vis* the interest of the shareholders.

The first thing which the managing agents, especially the multi-millionaire managing agents of textile companies who are typical of the lot, did, was to manage to get over the provisions of sections 356 to 359 which prohibited their being appointed as selling or buying agents of the companies under their management and receiving any commission in respect of goods sold or materials or machinery bought by the company. Emphasis was laid on the fact that the provisions of the Act only required that they should not act as *agents*. "There is nothing", so they argued, " to prevent us acting on a principal to principal relationship. Why not we buy from outsiders, cotton, machinery and all goods required by the company and supply them to the company at a handsome percentage of profits to ourselves. In doing so, surely we don't act as *agents* but only as seller to a buyer and this is not prohibited by the Act. Similarly what prevents us from acting as buyer of the yarn, cloth, waste, scrap, etc., of the mills at such prices as will give us a decent margin and then dispose of the goods to outsiders on our own terms." The thesis was developed and perfected with a wealth of specious argument, and one or more special resolutions apparently satisfying the provisions of section 360 of the Act but hoodwinking the requirements thereof, were got passed either at the annual general meeting next following the passing of the Act or at an extraordinary general meeting convened for the purpose.

As is well known, very few shareholders attend any general meeting of companies unless there are factions in the management or the directorate and each faction campaigns for canvassing votes and brings in voters to support its own cause. Both as legal adviser of several companies and shareholder in many, the present writer has yet to know of any meeting, at any rate in mofussil places, of a company whose shareholders on their own initiative have gone and attended and exercised their voting rights. Even in the case of companies having thousands of members, not more than a dozen or score attend ; and of these, excepting one or two or three, all the others are either employee-shareholders or other 'yes-men' sent for by the managing agents to be present at the meeting. In some cases there would not even be a sufficient number to form a quorum. In order to avoid this difficulty the quorum in the case of most companies has been fixed at as low as five members—the minimum required by the Act. The case of companies in Bombay or Calcutta may be different.

The practice in this part of India has always been for the managing agents to put forward their own partners where the managing agent is a firm, or directors or members where the managing agent is a body corporate, as candidates for directorship and have them appointed or re-appointed as directors at the annual general meetings ; and so long as there is harmony between the managing agents and the directorate (the clever-headed managing agents have always endeavoured to maintain such harmony)—there has never been any difficulty in getting any resolution or special resolution passed as desired by the management. In the rare event of a recalcitrant or dissentient director raising his head, if it is found that he cannot be bought off, he seldom finds it possible to get re-appointed at the next annual general meeting.

Where there is complete harmony and identity of interest between the Board of Directors and the managing agents, the provisions of the Act and the elaborate articles and the ostentatious terms of the managing agency agreement requiring that the managing agent should act under the superintendence, control and direction of the Board of Directors become an empty formality having no meaning or significance. In fact it is the Board of Directors that functions under the control and

direction of the managing agents, and it is no exaggeration to say that the managing agents make and unmake the directorate.

Though this kind of development, *viz.*, the directorate consisting mostly of the partners or associates of the managing agents and functioning under the direction and control of the managing agents instead of controlling and directing them, was not contemplated by the framers of the Act, yet that is the actual situation obtaining, at any rate in the case of public companies managed by managing agents in South India.

Under such circumstances the managing agents of such companies getting any resolutions or special resolutions passed by the managed company in general meeting either sanctioning or approving anything either prospectively or retrospectively, has become a matter of course, and no one should be deceived by the apparently stringent nature of the legal provisions in respect of them. Even in these rare cases where one or two or a few shareholders raise their heads and object to the passing of this or that resolution, the managing agents and their nominees and relatives who almost invariably hold a decent fraction of the equity share capital and always take care to obtain and keep ready a sufficient number of proxies, silence the dissentients by the combined use of their own votes and those of the proxies and carry the day.

Acting as sellers to and buyers from the managed company has been a very great and substantial source of profit to the managing agents, and it is this, more than anything else, which has contributed, is contributing and will continue to contribute to their position of millionaires and multi-millionaires in this country. While before the new Companies Act they were making these profits as *agents* as per terms of their managing agency agreement, they are now making them as sellers to and buyers from the company. It is a fact to be noted that in actual practice, in the case of very many companies the managing agents—whether individual, firm, or body corporate, have resorted to the device of constituting themselves and their associates into a number of business entities for the purposes of selling goods and rendering services to or buying goods from the companies under their management.

With a view to make a show of legality in their transactions it has become usual for them to get some such special resolution as the following passed by the company in general meeting as though in compliance with section 360 of the Act :—

" Resolved that in accordance with the provisions of section 360 of the Companies Act, 1956, the Company hereby approves of all contracts entered into or to be entered into by the Company with the following institutions and individuals, who are associates of Messrs. . . . the Managing Agents of the Company for the sale, purchase or supply of any property, moveable or immoveable or for the supply or rendering of any service, in the case of the former on terms of ready and forward delivery and either for cash or for deferred payment at rates which are not less favourable to the Company than the prevailing market rates or which are otherwise reasonable. The goods so supplied or sold or any services supplied or rendered by the Company to the said associates shall be paid for within one month from the date of supply or sale of the goods or supply or rendering of the service."—(*Resolution* adopted by a group of well-known textile companies in South India.)

No doubt a resolution like the above does not not comply with the requirements of section 360 of the Act. But who is there to question the legality or propriety of it ? Individual shareholders with their small stakes in the company are usually apathetic and may not like to litigate at their own expense for a common cause. The Registrar with his meagre staff, who has to deal with thousands of companies is concerned primarily with the regularity of filing and registering documents in his office, and getting his prescribed fees. And there is no penalty or effective machinery provided in the Act to punish the contravention of any of the sections 356 to 360, the only provision in section 363 providing that a managing agent receiving any remuneration in contravention of those sections should account to the

company for the same as if he was a trustee. The question is who is going to take action against the managing agents.

The resolution quoted above from a well-known company employs in all seriousness the words used in section 359 to the effect that the prices charged to or received by the company should not be less favourable to the company than the market rates or should otherwise be reasonable. But there is no machinery or means provided for verifying whether the prices paid or received by the company are fair or reasonable having regard to the market rates, nor for checking the quality of the goods or materials or services. The directors are the managing agents' own men and the auditor is neither charged with that duty nor competent to discharge it. The result is that the whole matter of buying and selling and servicing is left to the good sense and honesty of the managing agents, whose self-interest as sellers or buyers must necessarily conflict with their duty of buying and selling on behalf of the company at best rates favourable to the company.

This one point is enough to condemn the managing agency system except in the case of companies functioning with a thoroughly independent directorate capable of exercising real check over the management.

One other matter in respect of which the managing agents of companies evade with contumacy the provisions of the Act is the way in which they make loans and advance to themselves in the teeth of the provisions of sections 295 and 369 which prohibit the making of loans to directors and managing agents. What in fact they do is that instead of directly taking loans and advances they draw large amounts from the company as for the transactions of sales, purchases and supply of services to the extent of many lakhs of rupees every year. But in the Balance Sheet the overdrawings due by them at the end of each year are shown as "advances due by directors " but in reality the amounts are due by the partners of the managing agency firm or directors or members of the managing agency company and the fact that the amounts are due by the directors who are partners or other associates of the managing agents is concealed from the shareholders and the Registrar. And the auditor to whom patronage is extended by the managing agents in many ways does not also disclose in his report the true nature of the so-called " advances due by directors" but screens the true nature of the transactions by boldly saying that they are only book-debts exempted by section 296, though in reality all loan transactions, whatever their nature, relating to the managing agents are prohibited under section 369, and punishable under section 371.

Whatever the usefulness of the managing agency system in the past, it has, under present conditions, become a drag on the economic organisation of the country in its present set-up. There is no reason why we should not adopt the same method of management as is followed in western countries, *viz.*, management by executive directors or managing directors or governing directors by whatever name you call them instead of the costly effete and inefficient system of management by unskilled managing agents. If industrial development through joint-stock companies is to be efficient the whole of Chapter III of Part VI of the Companies Act has to be scrapped.

THE RIGHTS OF AN ILLEGITIMATE SON OF A SUDRA BY A WOMAN OF A TWICE-BORN CASTE

By

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In *Rahimtola* v. *Nizam of Hyderabad*[1], the House of Lords were divided upon a number of questions, most of which are not relevant to this article, but not the least interesting was the problem whether a Judge may found his judgment upon questions and authorities not raised or cited by counsel and not appearing in the judgment of the Court of first instance or the lower appellate Court, if any. Lord Denning, characteristically, took the view that the Judge's responsibility was not confined to the path indicated by counsel, but the majority of his brethren indignantly repudiated this doctrine. Academic opinion is solidly in favour of Lord Denning's view[2], for it seems obvious that there is a presumption that the Judge knows the law. The advocate's duty to rehearse before him the authorities and arguments which existing legal knowledge provide and experience indicate is no substitute for the Judge's own obligation to persist with enquiry and research, so long as there is the slightest possibility that counsel's reactions to propositions put to them from the Bench may not have been maturely meditated, and that there exist authorities which might have a direct bearing on the issue in question but have not appeared in counsel's prepared briefs. The Madras High Court, if it had been asked this very question in 1870 or thereabouts, could have made only one answer : at that period Judges such as Mr. Justice Holloway were perpetually framing their judgments with reference to considerations drawn from a multitude of quarters, many of which must have been, at their first citation from the Bench, a surprise to counsel. The Judge at that period felt free to cite Roman, French, German and other laws from his private library and if counsel would keep pace with him he must be an agile linguist as well as a legal philosopher.

It is unfortunate that in a very recent case a division bench of the Madras High Court, Panchapakesa Ayyar and Basheer Ahmed Sayeed, JJ., in *Velu Niranjan* (*Minor*) v. *Alagammal and others*[3], misstated the Hindu Law on a point which is, though not covered by direct authority, so plainly dealt with in cases upon closely analogous points that it is virtually settled law. Since the legal position of the parties to that litigation will be severely affected by the misstatement, and since similar cases may arise in some numbers, it is desirable that the error should be pointed out at the earliest opportunity. The error was, of course, due to counsel's failure to make the correct responses to questions from the Bench.

Slightly simplifying the issue for convenience of exposition, the question was whether the plaintiff was an heir, and might, after the death of the surviving spouse be the sole heir and trustee of *P*, a Hindu male, a Sudra by caste. The learned Judges decided that the plaintiff would be the sole heir, and that he already had a very substantial interest in the estate of *P*, his father. This, it is respectfully submitted, is incorrect, for in the circumstances as found *P* died intestate as to a large portion of his estate (part of which was subject to trusts for religious purposes), leaving his widow, a legitimate daughter and the plaintiff, his son by a woman who was not his wife but had been in his keeping for six years and more, and had been in his continuous keeping at the time of the plaintiff's conception. The plaintiff was thus a *dasiputra* of a Sudra. But since the mother was a member of the Kshatriya caste, the unfortunate lad was not merely illegitimate, but also the issue of reprobated union, a *pratilomaja*, for his mother was of higher caste than his father. Their Lordships rightly held that no marriage between the parents would have been possible

1. (1957) 3 W.L.R. 884, H.L. (E) : (1957) 3 All E.R. 441.
2. See, *e.g.*, A.J. Bland in 7 *International and Comparative Law Quarterly*, Jan. 1958, at p. 187.
3. (1959) 1 M.L.J. 265.

at the time (this was prior to the enactment of the Hindu Marriage Act), and that the pathetic ceremony at which the father-to-be tied a *tali* round the neck of the Kshatriya lady who was to be the plaintiff's mother was no marriage at all (notwithstanding its taking place in a temple, and, presumably in the presence of at least one witness) : for such a ceremony could be equally consistent with an intention to commence a concubinage, and no custom supporting marriage between castes in this order had been proved.

It is well known that the *dasiputra* of a Sudra can in certain circumstances claim a share, or even the whole of his father's estate[4] or could so claim if his father died before the coming into force of the Hindu Succession Act, 1956, which abolished the *dasiputra's* privilege. As their Lordships remark, unions between persons of different castes were becoming more common during the decades preceding the enactment of the ' Hindu Code ', but the Hindu Law itself did not prove elastic enough to permit such unions without the aid of statute. Custom occasionally assisted the parties, but disappointment is all too-frequently traceable in recent case-law. A marriage between a Kshatriya woman and a Sudra man was void, and the issue illegitimate : but a question arises as to whether a son of such a union would be a *dasiputra* within the meaning of Yajnavalkya II, 133, and as such capable of inheriting from his father or partaking in the joint family property. In three places in their judgments in *Velu's case*[5], the learned judges repeat that the plaintiff was entitled ultimately to one half of the estate as against the widow and the daughters. The assumption was, no doubt, that the Hindu Women's Rights to Property Act, 1937, was not applicable and that question will not be raised here. In their view the illegitimate son of a Sudra by a *dasi* of the Kshatriya caste was a heritable *dasiputra.* But this is not correct. Counsel appear to have omitted to cite *Datti Parisi Nayudu* v. *Datti Bangaru Nayudu*[6], *Ramachandra* v. *Hanam Naick*[7] and *Mahabir Prasad* v. *Raj Bahadur Singh*[8]. Reference was made to the Privy Council decision in *Kamalammal* v. *Visvanathaswami Naicker*[9]. But it was not observed that their Lordships in that very case cite texts (which they misleadingly say were not of governing authority in Madras—whereas they had been relied upon in *Datti Parisi Nayudu*[6], and were thus authoritative even for Madras) which showed how the fundamental text of Yajnavalkya was understood, and which make it clear that the Sudra's illegitimate son by a concubine of a twice-born caste it totally excluded from succession on intestacy.

In *Datti Parisi Nayudu* v. *Datti Bangaru Nayudu*[6], the principal question was whether an incestuous bastard could inherit from a Sudra father. In negativing this proposition their Lordships refer to the *Dayabhaga* of Jimutavahana, the *Smritichandrika,* and to Jagannatha's *Vivadabhangarnava,* otherwise known as *Colebrooke's Digest.* Some of these texts make the general proposition namely that the son of a *pratiloma* marriage can never inherit, though he may be maintained. Others point out that the *dasiputra* of a Sudra must be the son of a mother of the Sudra caste. The *dasi* is regarded by the *dharmasastra* as the ' unmarried wife ' of the Sudra for this limited purpose, and it is therefore quite legitimate to discover the meaning of the fundamental text of Yajnavalkya with reference to texts bearing upon the inheritance-claims of children of void marriages. In our case the ceremony was no marriage at all, and even if the ceremony had been perfect in point of form it would not have affected its validity[10]. If the sons of marriages void for *pratilomatwe* are excluded it follows that the sons of Sudras by kept concubines of a higher caste are excluded, and this provision is an exception to the wide terms of Yajnavalkya's text. As if to eliminate any possibility of doubt Jagannatha says[11] :

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4. *P. V. Kane : History of Dharmasastra,* iii, 1946, 600 fol.
5. (1959) 1 M.L.J. 265 at 266, 268, 269.
6. (1869) 4 Mad. H.C.R. 204.
7. (1936) I.L.R. 60 Bom. 75 : 37 Bom.L.R. 920.
8. (1942) I.L.R. 18 Luck. 585.
9. (1922) L.R. 50 I.A. 32 : I.L.R. 46 Mad. 167 : 44 M.L.J. 465.
10. See the informative discussion of the whole matter by Balambhatta on Mit. on Yajn. I, 94, Trans. by Srish Chandra Vidyarnav, (Allahabad, 1918), p. 193-200.
11. *Colebrooke's Digest,* Madras edition of 1865. II, 325, Text CLXXIV.

"Consequently a son by a female slave, not superior in class to her Sudra master shall obtain the moiety of a full share. Such is the opinion delivered in the *Mitakshara* and *Ratnakara*". It is comforting to find in this context that there is no difference of view between the two major schools of *dharmasastra*, the Bengali and Maithili authors adopting the same attitude and applying the same tests. In *Datti Parisi Nayudu*[12] their Lordships say, upon the authority of the texts, that the son of a Sudra by a twice-born woman would be excluded from participating in the inheritance of his natural father. With respect, this is perfectly borne out by the authorities they cite, and has been confirmed by the judgment in *Ramachandra* v. *Hanam Naik*[13].

In *Ramachandra case*[13] the question was whether the illegitimate son of a Sudra by a Brahmin concubine could inherit. It was held by Divatia, J., that he could not. The difference between a Brahmin concubine and a Kshatriya concubine is now negligible. The fact that the issue of a Brahmin woman and a Sudra man is a *chandala*, but that of a Kshytirya woman and a Sudra man is less loathsome in orthodox eyes is no longer relevant. At one time it was felt that the *dasi* ought to be a slave, but that view, retained for some time in Bengal, was abandoned in Madras as early as *Muttusamy Jagavira* v. *Venkatasubha Yettia*[14], and has no relevance except in so far as the fact that a Brahmin could not be enslaved being well known to the *dharmasastris*, it was obvious that a Brahmin woman could not *at any period* have been contemplated as the mother of a heritable *dasiputra*. But this point has never been of importance since it has been accepted on all hands that the the *dasiputra's* mother might be free to leave her paramour at any time after the son's conception. *Ramchandra's case*[13] is therefore virtually on all fours with *Velu Niranjan's case*[15], and ought to have been cited in argument. That the non-Sudra *dasi* could not be the mother of a heritable *dasiputra* is accepted without question by the Privy Council in *Kamalammal's case*[16] though there the question was only of the size of the share available for a genuine, heritable *dasiputra*.

Thus it is submitted that the plaintiff was not interested in his father's estate beyond the right to maintenance for life, to which any illegitimate son of a father of any caste by a mother of any caste is entitled, once his paternity is established. The position in the case of the estate of one who dies after the coming into force of the Hindu Adoptions and Maintenance Act, 1956, differs but we are not concerned with that problem in this context.

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12. (1869) 4 M.H.C.R. 204, 215.

13. (1936) 60 Bom. 75 : 37 Bom.L.R. 920. Followed in *Mahabir Prasad* v. *Raj Bahadur Singh*, (1942) 18 Lucknow 585.

14. (1865) 2 M.H.C.R. 293.

15. (1959) 1 M.L.J. 265.

16. (1922) L.R. 50 I.A. 32, 38 : I.L.R. 46 Mad. 167, 174 : 44 M.L.J. 465.

BOOK REVIEW.

LAW OF LIMITATION AND ADVERSE POSSESSION, *By* K. J. RUSTOMJI, 6th edition, by J. L. JOSHI, 1958, Published by N. M. TRIPATHI (Private) Ltd., Bombay 2 : 1262 pages, Price Rs. 45.

The law of limitation in India has to a large extent been bogged by reason of its enumerative approach to the subject. Apart from the 30 sections stating general principles, no less than 148 causes of action have been detailed in the Schedule, each carrying its own period of limitation and on top of it all, there is also a residuary article, Article 120, which has been responsible for much confusion and a mass of case-law. Even in a country like England where there is a common law jurisprudence, alongside of statute law, the statute on limitation only specifies the types of action available and the period of limitation appropriate to each of them. Following upon the recommendation of the Fifth Interim Report of the Law Revision Committee, in 1934 the limitation law is stated in 34 sections without any schedules. In our country, most of the remedies available are derived from one enactment or another and, as such, it should be for each statute to prescribe the limitation applicable to the remedy provided by it. It should not be a function of the Limitation Act to do so. As it is, the Limitation Act is rather unscientific and illogical in its approach and has been responsible for a considerable number of judicial decisions, not always easy to reconcile. It should therefore be a matter for gratification that the Law Commission has in its Third Report stressed the need for simplifying and modernising the law of limitation.

Rustomji's work on limitation has become a classic and enjoys deserved popularity as a helpful treatise on the subject. It is not of that type of legal work which is little more than a glorified digest or a classified arrangement of cases with analyses or summaries of the important cases with some explanation of the rules to be deduced. On the other hand, it constitutes a juristic presentation of the matter with criticisms of decisions whenever needed. To edit such a work is not an easy task. The present Editor has, however, acquitted himself creditably. More than two decades have passed since the publication of the last edition and more than 4,000 cases had to be scrutinised and evaluated. It should not, therefore, be a matter for surprise if in the process, some decisions which may carry an appeal to others have escaped notice or have been dismissed as not requiring any special mention. The decision of the Madras High Court in *Ramagopal Naicker* v. *Muthukrishna Ayyar*[1], as to the effect of an acknowledgment, for purposes of section 19 of a debt by the Receiver in Insolvency does not seem to have been considered : likewise the decision of Subba Rao, C.J., and Ansari, J., in *Mylavarappu Subba Rao* v. *Mangalampalli Ramamurti*[2], holding that Article 44 has no application to a gift of a minor's property by his guardian, and dissenting from a contrary view taken in *Rangaswamy* v. *Marappa*[3], cited with approval in the book does not seem to to have been noted.

The present edition contains a number of helfpul features. A topical index is attached which is bound to be very serviceable. A number of suggestions for revision of the Limitation Act have been made and these should deserve attention. Extracts from the United Kingdom Limitation Act, 1939, have, given, facilitating comparison with the provisions of the Indian Limitation Act. Attention is invited been to the need for adoption of a common method of citation of cases particularly in view of the fact that citatoin by names of the parties has been done differently in different books and has become baffling, as for instance, where the same case is cited as *Abdul Karim Sahib* v. *Lakshmanaswami* by one author, and as *Tadinada* v. *Pulavarti* by another. To cut down bulk and increase in pages, resort has been had to close printing in small types. This is, however, a matter of doubtful utility. The book is sure to be of the greatest assistance to all practising lawyers as well as Judges.

S. VENKATARAMAN.

1. (1956) 2 M.L.J. 429.
2. (1957) 2 Andh, W.R. 282.
3. (1952) 2 M.L.J. 506.

THE HONOURABLE MR. JUSTICE GANAPATIA PILLAI.

We offer our felicitations to the Honourable Mr. Justice Ganapatia Pillai on his appointment as a Permanent Judge of the Madras High Court. Within the short time of less than a year, since his appointment as an Additional Judge of the High Court his Lordship has become very popular not only with the Bar but also with the larger public of the City of Madras and we are sure his appointment as a Permanent Judge of the High Court will be welcomed by all.

THE HONOURABLE MR. JUSTICE M. ANANTHANARAYANAN, I.C.S.

We offer our sincere felicitations to the Honourable Mr. Justice M. Ananthanarayanan on his elevation to the Bench of the Madras High Court. Mr. Justice Anathanarayanan belongs to the highly prized Indian Civil Service and is a senior civilian who has had a brilliant and distinguished academic record both in this country and overseas. He hails from a distinguished family of scholars and is himself known as a man of high academic and literary tastes. He is not new to the Members of the Bar as he has served as a District Judge for several years. In the past three years he has been the Director of Legal Studies at the Law College, Madras, and has been contributing erudite and useful articles on some of the current legal topics in several Periodicals.

His Lordship was sworn in on 10th August, 1959, by the Honourable Chief Justice in his Chambers. His Lordship sat in the Court the same day and was welcomed by Sri. R. Gopalaswami Iyengar, a senior member of the Bar, who assured him the co-operation of the Bar in the discharge of his Lordship's duties. With the background of high tradition and rich experience, both administrative and judicial, we are sure his Lordhsip will prove an useful asset to the Madras High Court.

We wish him a long and successful tenure of office in his new assignment.

BOOK REVIEWS.

ANCIENT FREEDOM—PUBLIC ADMINISTRATION OF THE IKSHVAKUS, by B. N. CHOBE, *Senior Advocate, Supreme Court of India,* Published by Purushottam Das Memorial Trust, Hyderabad : Price Rs. 2.50

Under the heading " Ancient Freedom—Public Administration of the Ikshvakus ", Sri B. N. Chobe, Senior Advocate, Supreme Court of India, has contributed a number of essays dealing with varied topics ranging from the Rule of Law to the Women in the time of Ramayana. They are largely based on the author's study of the classics, in particular Ramayana, Dharmasastras and the Arthasastra of Kautilya. Whether one can entirely subscribe to his view that democracy in its modern concept was at work even during the Puranic times or not, a study of this book is bound to be interesting and helpful as it furnishes a volume of useful knowledge. The learned author has given proof of his extensive and intensive study of the Sanskrit lore, especially Valmiki's Ramayana. We have no doubt that the book will be very widely read and that it shall meet with the success it deserves.

CONVEYANCING COUNSEL, by H. R. Mehta, LL.M., Advocate. Published by Kailash Law Publishers, Basinau, Jullundur. Price Rs. 10.

This small handbook containing forms and precedents in conveyancing is bound to be of use to practitioners and laymen alike. If contains a fairly exhaustive collection of specimen forms relating to several transactions of frequent occurrence.

LAW RELATING TO INDUSTRIAL DISPUTES, by V. G. Row, Bar-at-law, Advocate, Madras. Madras Book Agency, Villivakkam, Madras. Price Rs. 12.50.

The book contains the text of the Industrial Disputes Act, 1947 and the Rules framed thereunder (Central Act and Rules) as amended up-to-date with notes and case-law. The book is divided into two parts, the first containing the Statute and Rules and the second relating to adjudication of disputes. The Author has brought to bear in his commentaries his practical experience gained in the conduct of cases in this field. The book is a useful addition to the existing books on the subject.

RESTRAINTS ON ALIENATION

By

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Modern systems of Jurisprudence regard the right of alienation as the most important mark of absolute ownership. It is however a fact, that restraints on alienation had been imposed for various reasons in different systems of law. Such restraints were the result of certain kinds of property being regarded as sacred or highly precious and valuable or as things to be conserved and maintained without disintegration. The motivating factors have been many and varied.

In Anglo-Saxon times land was held absolutely without liability to pay rent or service. Such ownership was called allodial ownership. The position changed radically after the Norman Conquest. As a result of the Norman Conquest in 1066, the claim was set up that the King thereby became the owner of all the lands. It followed that there could be no private ownership in land. Such interest was referred to as an estate. The tenant derived his title immediately or mediately from the King. If he derived immediately, he was called tenant-in-chief. In most cases the person in actual possession would have derived his title through a chain of persons standing between him and the Sovereign. The person in possession was called tenant in demesne and the intermediate lords were called mesne lords. This process was termed as subinfeudation.

Feudal tenure restricted the power of alienation. A tenant could only grant fee to another to hold of himself as a mesne lord by means of subinfeudation. There was no question of the transfer of the entire interest of the transferor in the property. Subinfeudation was obnoxious to great lords by reason of its affecting their rights to marriage and wardship. Subinfeudation was abolished by Statute Quiae Emptores in 1290 during the time of Edward I.

Absolute ownership must be exclusive; it must be immediate and it must be beneficial. There are various degrees of ownership: (1) Absolute ownership; (2) Co-ownership; (3) Conditional ownership; (4) Future ownership; and (5) Trust ownership. At present time a tenant in fee-simple is in effect an absolute owner of the land for all practical purposes. Austin observed that the idea of absolute ownership is a right indefinite in point of user, unlimited in extent of duration, and alienable by the actual owner from every successor, who, in default of alienation by him, might make the subject of it. (Austin: Jurisprudence, page 835).

Certain species of property had been withdrawn in all systems of jurisprudence, from the operation of the general rules as to free alienation. Roman law distinguished between *res commercium* and *res extra commercium.* In English law, for a long timel anded property was inalienable. The same is true with Hindu Law. The Hindu joint family system had effectively precluded alienation of land. Apart from such special categories, alienation is incidental to and inseparable from the beneficial ownership of property.

The general principle that a restriction on alienation is void rests on the principle of repugnancy. Jarman says: " A power of alienation is necessarily and inseparably incidental to an estate in fee. If therefore, lands be devised to *A* and his heirs upon condition that he shall not alien, the condition is void."[1]

A restraint on alienation my be absolute or partial. An absolute restraint on the power of alienation is bad and it is repugnant to the nature of the estate. In *Metcalfe* v. *Metcalfe*[2], Kekewich, J., said " You cannot limit an estate to a man and his heirs until he shall convey the land to a stranger, because it is of the essence of

1. Jarman on Wills, 8th edition, volume II, page 1477.

2. (1890) L.R. 43 Ch.D. 633, 639.

an estate in fee that it confers free power of alienation, and it had long been settled that the same principle is applicable to gifts of personality." It is a question of substance and not of mere form whether the condition takes away the whole power of alienation substantially. The restraint may relate to (1) time, (2) class, (3) mode of alienation, etc. In In re *Rosher*[1], Rosher bequeathed to his son an estate absolutely, with a proviso that if the devisee or any person claiming through him desired to sell the estate in the lifetime of the testator's wife, she should have the option to purchase the estate at the price of £3,000. The value of the estate was £15,000. The question was whether the option of purchase given to the widow by will was null and void. It was held that the option given to the widow was absolute restraint on alienation though limited in time, *viz.*, the lifetime of the widow and that it was void. It amounts to saying " during the life of the widow, you shall not sell." This principle was followed in In re *Cockerill, Mackaness* v. *Percival*[2]. It is a settled principle that a restraint on alienation is bad even if it is limited in point of time. A condition contained in a grant to a man or married or unmarried woman that the donee shall not alienate at all ; shall not alienate during a particular time ; shall alienate only to a particular person ; and shall not bar an entail, is void.

Partial restraint on alienation is valid. A condition is valid which restrains the owner from alienating to a specified person or to anyone except to a particular class of persons, provided the class is not too restricted. A gift over is void for repugnancy and the beneficiary takes absolutely.

Property cannot be given to a man exempt from the operation of bankruptcy. It was held in Re *Machu and Metcalfe* v. *Metcalfe*[3], that if property was given to a person absolutely, followed by a gift over to take effect on involuntary alienation, such as bankruptcy or insolvency, the gift over is void. A condition subsequent is void if it is uncertain either in expression or in operation. In *Jeffreys* v. *Jeffreys*[4], there was a condition that an "estate should be forfeited if the donee in any way associated, corresponded or visited with any of my present wife's nephews or nieces". It was held that the condition was void. The effect of a void condition has been set out as follows : —" If land is conveyed to a person on a condition, which is void, then in the case of a condition precedent, the conveyance is void and the interest does not arise ; but in the case of a condition subsequent, the condition alone is void, and the donee takes an absolute interest in the property free from the restrictive clause.[5]

The law in India is similar[6]. Among Muslims also a restriction on alienation is bad[7]. The principle that restraint on alienation is bad is of universal application.

Sections 10 to 18 of the Transfer of Property Act, 1882, give us the rules to be observed in transferring property. Section 10 of the Transfer of Property Act, 1882, as amended by Act XX of 1929 and Act V of 1930, deals with conditions restraining alienation. The section states : " Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein." In *Mudara* v. *Muthu Hengsu*[8], there was a partition deed which contained a clause that " if necessity arises for contracting debts on the liability of this property, all the major members of both branches should jointly do so. It was held that this clause was repugnant to the absolute interest created by the partition and was ineffective. In *Sarju Bala* v. *Jyotirmoyee*[9], a Hindu executed three documents whereby he granted immovable property to his daughter. There

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1. (1884) L.R. 26 Ch.D. 801.
2. L.R. (1929) 2 Ch. 131.
3. 43 Ch. D. 633.
4. (1901) 84 L.J. 417.
5. Cheshire—Real Property, page 534.
6. *Venkataramana* v. *Bramanna*, (1869) 4 M.H.C. 345.
7. Tyabji—Mahommedan Law, 3rd edition, page 463.
8. A.I.R. 1935 Mad. 33.
9. I.L.R. 59 Cal. 142.

was a defeasance clause : " Further, if you or your heirs as aforesaid willingly give up your residence in Jayadevpur, and God forbid, if the particular heirs of you, whose rights have been mentioned, in respect of the lands of this patta, cease to exist, then the terms written in this patta will become inoperative, and the talik will revert to the right of me and my heirs." The Privy Council held that his daughter took an absolute estate of inheritance which she can dispose of by deed or by will and the condition should be disregarded as a restriction on the powers of an absolute owner which is repugnant to the estate.

As regards partial restraint on transfer there is no difference between English law and Indian law. In *Mahomed Raza* v. *Abbas Bandi*[1], a deed of compromise was entered between an intending husband and wife by which certain immovable property was given to the woman as permanent proprietor, and it was provided *inter alia* that she " shall not have power to transfer this property to a stranger ; but the ownership thereof as family property shall devolve on her legal heirs, from generation to generation." The wife sold and mortgaged all the property to strangers. And on her death the plaintiff claimed as her heir, sued to recover the property from the strangers (defendants) to whom it had been transferred by the deceased. Sir George Lowndes held that the condition was not absolute but partial ; it forbids alienation only to strangers, leaving her free to make any transfer she pleases within the ambit of the family. Their Lordships also held that even after the passing of the Transfer of Property Act, 1882, a partial restriction imposed by the document against alienation outside the family was not void for repugnancy. Sulaiman, C.J., pointed out in *Gayasi Ram* v. *Shahabuddin*[2], that "in order to see whether there is absolute restraint or not, one has to examine the effect of all the conditions and find out whether for all practical purposes alienation is prohibited. The mere fact that there may be some remote contingency in which there may be a possibility of an alienation taking place would not necessarily take the case out of the prohibition contained in section 10 of the Transfer of Property Act." In *Trichinopoly Varthaga Sangam, Ltd.* v. *Shanmuga Sundaram*[3], a partition deed was executed between a Hindu father and his five sons and a clause was inserted in the partition deed which ran as follows: " The three houses described in Schedule G shall be enjoyed in common by T. M. Chockalingam Pillai and his sons as at present during the life of Chocklingam Pillai. It shall not be competent for any of the said sons to sell, or mortgage or otherwise alienate the houses in Schedule G. during Chocklingam Pillai's lifetime. After Chocklingam Pillai's lifetime also the house in Schedule G should be enjoyed by the sons in common without partition and should not be let, sold or otherwise disposed of to any stranger. If any of the sons does not want to live in the house mentioned in Schedule G, he shall not be at liberty in any manner to let or lease, etc., his undivided share to a stranger or to the family but shall do so only to any of his brothers or their heirs for a sum not exceeding Rs. 1,000, the intention of all the parties to this deed being that the houses should be enjoyed by only the members of the family and their descendants and not by strangers." The question was whether this restriction on alienation amounts to an absolute restriction. Leach, C.J., pointed out that the Board in *Muhammad Raza* v. *Abbas Bandi*[4], considered the effect of prohibition so far as the deceased herself was concerned and the observations in that judgment went no further. Leach, C.J., further pointed out that restrictions against alienation outside the family applied to the parties to the deed and their descendants ; and held that the restriction imposed by the deed amounted to an absolute restriction on alienation within the meaning of section 10 of the Transfer of Property Act.

A donor who reserved a power of revocation to revoke his gifts in case of alienation is invalid. The Court held in *Shiba Prasad* v. *Lekraj & Co.*[5] that a restraint on involuntary alienation, *e.g.*, Court Sale is invalid and unenforceable.

1. (1933) 63 M.L.J. 180.
2. (1935) I.L.R. 57 All. 861.
3. (1939) 2 M.L.J. 345 : I.L.R. (1939) Mad. 954, 960.
4. (1932) I.L.R. 7 Luck. 257 : L.R. 59 I.A. 236 (P.C.).
5. A.I.R. 1945 Pat. 162.

There are two exceptions to the rule against restraints on alienation in Indian law. A lease is an exception to the rule against restraint on alienations. A condition in a lease that the lessee shall not sub-lease or assign is valid. Section 108 (*j*) of the Transfer of Property Act, has to be read with the words "in the absence of a contract to the contrary." The restraint on the power of alienation in the case of a married woman who is not a Hindu, Mohamedan or Buddhist is another exception to the rule that restraints on alienation are void.

Where a condition with regard to the mode of enjoyment has been attached in a grant of an absolute estate, the condition is void. " Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction[1]. The corresponding section of the Indian Succession Act is section 138. Both in Hindu and Mahomedan law the invalidity of conditions of restraint of enjoyment of property is recognised. There is an exception to this rule which is recognised in *Tulk* v. *Moxhay*[2], that the transferor may impose conditions restraining the enjoyment of land if such restrictions are for the benefit of his adjoining land. Section 12 of the Transfer of Property Act says : " When property is transferred subject to a condition or limitation making any interest therein, reserved or given to for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void." Sections 13 to 17 of the Transfer of Property Act contain the rules concerning future estates. The most important of these rules is the rule against perpetuities. The rules restricting perpetuity, remoteness and against accumulations of income shall not apply in the case of transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind. (Section 18 of the Transfer of Property Act).

From the foregoing it is clear that in England for a long time land had been regarded as inalienable. By the Statute Quia Emptores, 1290, the power of alienation was recognised. Absolute ownership is single, independent, and unrestricted. It may be qualified in special instances and under special provisions. In English law absolute restraints on alienation are treated as void and partial restraints on alienation are permissible. The same is the position in Hindu and Muhammadan Law. Judicial decisions in India have also followed the same principle—that absolute restraints on alienation are bad and partial restraints on alienation are good. According to sections 10 and 11 of the Transfer of Property Act, 1882, absolute restraints on alienation are void and partial restraints are good and a restriction on the enjoyment of property is void.

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1. Section 11 of the Transfer of Property Act.

2. (1848) 2 Phill. 774.

UNVEILING OF THE PORTRAIT OF

T. L. Venkatarama Aiyar in the Supreme Court.

The following speech was delivered by Shri M. C. Setalvad, Attorney-General of India on the occasion of the unveiling of the portrait of Shri T. L. Venkatarama Aiyar, Retired Judge of the Supœreme Court, on 14th August, 1959, in the Supreme Court:

SPEECH DELIVERED BY SHRI M. C. SETALVAD:

I deem it a great privilege to have the opportunity to present to this Court on behalf of the Bar in India the portrait of Justice Aiyar who has recently retired from this Court.

In our system of administration of justice, the Bench and the Bar are two inseparable complements making for its efficiency. Though the judiciary is, as it were, the predominant partner in the carrying on of this great undertaking the Bar may well claim to be the parent of the predominant judicial element. For it is the Bar which is the main and in some countries the sole recruiting ground for the judiciary. Indeed in some countries organisations of the Bar have a voice in the selection of some of those who preside over important Courts. Members of the Bar practising in a Court are, therefore, perhaps best fitted to truly appraise the worth of a judicial career. It has been said that "the Bar is the Judge of all Judges." It is, therefore, appropriate that the Bar should now and again express its respectful appreciation of those who have filled judicial office with distinction. Such appreciation expressed from time to time is, I venture to say, bound to promote a healthy co-operation between the two main elements which enable our judicial system to function. These and like sentiments have prompted the Bar in India to offer its humble tribute to the distinguished judicial career of Justice Aiyar.

It is well to remember that while the Bar respects and honours all the Judges it wisely singles out the more distinguished ones so that the memory of their inspiring careers may be preserved on the walls of this Court House. The value of the tribute lies essentially in the discrimination which the Bar exercises in choosing the luminous stars in the judicial firmament for its appreciation.

The Bar has, I think, a peculiar sense of gratification and pride in paying this tribute of appreciation. Justice Aiyar could perhaps be said to have been a direct recruit from the Bar more than any other Judge of this Court. If my memory serves me right, he was persuaded to accept a seat on the Bench of the Madras High Court only at a late stage of his long and distinguished career at the Bar. Sitting frequently as the colleague of the

learned Chief Justice of that Court he soon came to be regarded as an erudite Judge delivering important judgments on numerous constitutional and other matters. After a very short judicial experience on the Bench of that Court he was brought to the Supreme Court; and we all know how he adorned the Supreme Court Bench. His career as a Supreme Court Judge would seem to belie the theory that judicial experience alone ensures a "capacity to form a sound and a balanced judgment and to express it with clarity." The judicial eminence of Justice Aiyar derives from his great training at the Bar at Madras.

It would be presumptuous for me to attempt to speak of the numerous sectors of law which he has covered and the fresh ground which he has broken on many a legal topic in the numerous lucid and penetrating judgments which he has delivered in this Court. Most of those present here are as or perhaps more familiar than I am with his great achievements in the judicial field.

Perhaps I cannot do better than quote the words in which a member of the Bar expressed his appreciation of the Judge on the day of his retirement.

"Whether it was a question of the interpretation of the Constitution, a point of law touching industrial relations, a problem of Hindu Law, or a complicated issue of fact, arguments at the Bar even by its juniormost members were patiently received and quickly and fully appreciated. Not unoften the argument was indeed made clearer and more forceful by the manner in which the Court made a clarification of it to counsel. The Judge's opinions on a number of complicated legal questions which lie embedded in the Reports bear the stamp . . . . of a rare combination of a subtle and penetrating intellect with a far-reaching breadth of view. These great attributes were carried withal by a personality ever so gentle, unassuming and humble in mind."

Humility of mind is, it is said, indispensable to the making of a great Judge. The consciousness that legal and juristic principles constitute a vast field which one can never hope to fully explore and that life and circumstances exhibit countless and inexhaustible facets must needs results in making a Judge's mind extremely receptive and apt to the enunciation of fresh and far-reaching principles. If I may be permitted to say so, Justice Aiyar possessed this indispensable quality in a considerable degree.

Nor were his interests confined exclusively to law. Notwithstanding his pre-occupations as a practising lawyer and a Judge he could find time to delve deeply into Sanskrit literature and philosophy and is, I understand, a connoisseur of scientific Indian music.

Let me express on behalf of the Bar its sincere wishes that the distinguished Judge may yet be with us for many happy years to serve the public in other useful spheres.

I now request the Chief Justice and the Judges of the Supreme Court to be gracious enough to accept the portrait of Justice Aiyar, painted by the well-known Artist Sri Deuskar, for being hung in this Court room where he was accustomed to sit as a tribute by the Bar to his distinguished judicial career.

SPEECH DELIVERED ON THE OCCASION BY THE HON'BLE THE CHIEF JUSTICE OF INDIA.

My colleagues and I have great pleasure in accepting the life-size portrait of our erstwhile colleague, Shri T. L. Venkatarama Aiyar, which, you, Mr. Attorney-General, have on behalf of the Bar of India, just presented to this Court. By this graceful act, you have paid a handsome tribute to an eminent jurist, a conscientious Judge and a great gentleman to whom honour and respect are justly due. On behalf of the Court, I offer to the Bar of India our grateful thanks for what may be called a token of their affection for the great Judge..

I am happy to recall the pleasant memories of our very close association with Shri T. L. Venkatarama Aiyar for about five years during which we had the benefit of his sound advice and guidance. He extended to us in and out of Court great consideration, courtesy and kindness. To the members of the Bar, who appeared before him, he habitually gave a patient hearing and a sympathetic consideration. While he was readily appreciative of the merit of an argument carefully prepared and earnestly propounded, he was at the same time prompt in rejecting a seemingly plausible but substantially false argument. He was always courteous and receptive and yet he was firm and outspoken when an occasion arose. His temper had never been seen to be ruffled or frayed and the serene expression of his benevolent countenance and his genial temperament made work in his Court pleasant and fruitful. The Law Reports will bear testimony to his deep legal learning and erudition and his grasp of and mastery over the fundamental legal principles. Indeed, by his conscientious discharge of his onerous duties and the excellence of his contribution to the development of our law—whether in the domain of Hindu Law, Constitutional Law or in tax matters—he has deservedly earned your affection and respect.

As a man he has been unostentatious and of simple habits. In his daily life he reflects the ancient Indian ideal of plain living and high thinking. His interest in life has not been confined to the domain of law only but has a wider sweep embracing the realm of Sanskrit literature, music and the ancient scriptures. The presentation of his portrait manifestly marks the deep appreciation, on the part of the members of the Bar, of the sterling qualities of his head and heart. This portrait will always be a source of inspiration to the future generation of Judges who will come and work in

this Court that honest hard work alone can earn for a Judge, the high and unstinted admiration of the members of the legal profession.

We are, indeed, fortunate in having him in our midst, although he is serving the nation in a different but an allied field. I have no doubt that this demonstration by the members of the Bar of their deep appreciation of his vast learning and other virtues will touch his heart. I take this opportunity of congratulating him on the great and unique distinction which the presentation of his portrait in his lifetime clearly signifies. This portrait hanging on the walls of this Court will always be a visible symbol of the deep appreciation of the members of the profession of the greatness and goodness of an eminent jurist, a conscientious Judge and a lovable gentleman.

With these few words, I proceed to unveil this portrait that you have presented to the Court.

THE OUTGOING AND INCOMING CHIEF JUSTICES OF THE SUPREME COURT.

Within the almost ten years that have elapsed since the Supreme Court was established there have been no less than five different Chief Justices. The latest of them is Shri Sudhi Ranjan Das. The tenure of each of the incumbents has been too short to enable him to leave any powerful impression of his individuality or legal philosophy in regard to the work of the Court. Each of the Chief Justices so far, has, however, been a person with large judicial experience as a Judge of the, High Court and the Federal Court and that has enabled him to bring into the Supreme Court mature and mellow wisdom and an intimate acquaintance with the different branches of the law. The office of Chief Justice is one which calls for the highest qualities in the person appointed to the post, legal erudition, integrity, impartiality, learning, and great courage. The Chief Justice has, apart from his judicial functions, other duties as well. It is his advice that will guide the Government in appointing Judges to the Supreme Court and to the different High Courts. It will be useful to recall in this context that the Law Commission has suggested that the person to be appointed as Chief Justice should be appointed at such an age as will give him at least a ten-year tenure of office, and that the Chief Justice may also be directly appointed from the Bar.

Shri Sudhi Ranjan Das was called to the Bar from the Gray's Inn in 1918, joined the Calcutta Bar in 1919, and, in course of time, acquired a considerable practice. He was also, for some time, a Lecturer at the Calcutta Law College. He became an Additional Judge of the Calcutta High Court in 1942 and a permanent Judge in 1944. He was appointed as the Chief Justice of the East Punjab High Court in January, 1949 and within less than a year became a Judge of the Federal Court in the first instance and thereafter when the Supreme Court was constituted, a Judge of the Supreme Court. Since December, 1955, he has been the Chief Justice of that Court.

These are times when the country is rapidly moving from the era of individualism to one of greater social sensitivity. Constitutional law presents the extremes of judicial opportunity. The Supreme Court, as the final interpreter of the Constitution, has a special place and is always looked to for proper and correct guidance and fearless exposition. It has been said that where the language is explicit, the precept complete, the particular situation provided for, the mandate of the Constitution represents the ultimate imperatives. These conditions seldom occur in the cases that reach the Court, and it is in the field of constitutional decision that the breadth and sweep of the written words afford the freest play for the constructive work of the Judge in the light of the spirit of the Constitution. The Judge has to bring to his office all that he is, all that he has, and all that he can win from the garnered knowledge of the world. Shri Sudhi Ranjan Das had an adequate appreciation of these factors. He knew that law is man's servant and not his master and that interpretation of law should make it more truly reflective of a changing

society. In *State of Bombay* v. *Chamarbaugwala*[1], with reference to betting and gambling he observed that to control and restrict betting and gambling is not to interfere with trade, commerce or intercourse, as such, but to keep the flow of trade, commerce, and intercourse free and unpolluted and save it from anti-social activities. In *Garikapati Veerayya* v. *Subbiah Choudhury*[2], he ruled that where a suit had been instituted before the date of the Constitution, the parties thereto had from the date of the institution of the suit, a vested right of appeal, upon terms and conditions then in force. The learned Chief Justice was unsparing and outspoken in his criticism of arbitrary executive action. In *Ghaio Mal and Sons* v. *State of Delhi*[3], on an application for *certiorari*, he observed : " We strongly deprecate this attempt on the part of the official respondents to bypass the Court. We are bound to observe that the facts appearing on the records before us disclose a state of affairs which does not reflect any credit on the administration of the erstwhile State of Delhi ". In *Dalmia* v. *Justice Tendolkar*[4], apropos the powers given under the Commissions of Enquiry Act, 1952, he said: " We feel sure that if this law is administered by the Government with an evil eye and an unequal hand or for an oblique or unworthy purpose the arms of the Court will be long enough to reach it and strike down such abuse with a heavy hand ".

In the retirement of Shri Sudhi Ranjan Das the Supreme Court will be losing the services of an erudite, able and much respected Chief Justice.

Shri Bhuvaneshwar Prasad Sinha, the new Chief Justice, has been an eminent Judge of the Supreme Court since December, 1954. Born on February 1, 1899, he joined the Patna Bar in 1922 and successively held the posts of Government Pleader in 1935, Assistant Government Advocate in 1940, Judge of the Patna High Court in 1943 and Chief Justice of the Nagpur High Court during 1951 to 1954. Justice Sinha has the gifit of clear analysis and luminous exposition. His appointment as Chief Justice will, we are sure, give satisfaction to all. We extend our respectful felicitations to him on his new assignment.

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1. (1957) S.C.J. 607 : (1957) 2 M.L.J. (S.C.) 87 : (1957) 2 An.W.R. (S.C.) 87 : 1957 M.L.J. (Cr.) 558.
2. (1957) S.C.J. 439 : (1957) 2 M.L.J. (S.C.) 1 : (1957) 2 An.W.R. (S.C.) 1.
3. (1959) S.C.J. 105.
4. (1959) S.C.J. 147 : (1959) 1 M.L.J. (S.C.) 67 : (1959) 1 An.W.R. (S.C.) 67.

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Dr. C. P. RAMASWAMY AIYAR

A TRIBUTE.

It is easy to speak or write about Sachivothama Dr. C. P. Ramaswamy Aiyar. Indeed, who cannot or would not effuse over such a distinguished and fascinating personality? The difficulty is to restrain oneself from using too many superlatives. Strikingly handsome in appearance, invariably carrying himself with an aristocratic *aplomb*, widely read in English, French and Samskrit, exceedingly well informed on any and every subject, lively and sparkling in conversation; a superb lawyer, a finished orator, a virile and combative politician, a versatile diplomat, an able and efficient administrator, an engaging unofficial ambassador in foreign countries representing the best in Indian Tradition and Culture. His life and career as student, lawyer, Advocate-General, Law and Commerce Member, Dewan of a State, Representative of India, Vice-Chancellor of Universities and peripatetic lecturer is an inspiring object-lesson in what ability, intelligence and industry combined with *Bon homie* and *Joie de vivre* can do for a man. And what a man!

> " . . . . the elements
> So mix'd in him, that Nature might stand up
> And say to all the world, *This is a man* ".

He flashed across the legal firmament in Madras like a brilliant meteor with an almost ethereal effulgence; a prime favourite of the Gods and succeeding generations of Judges and litigants. His phenomenal success at the Bar after a hectic period of office in the

administration of his Province was but one of the several dramatic episodes in his long, varied and eventful life. His great devotion to his revered father, his loyalty and attachment to some friends of his early days are touching qualities in him. We who have known him and been privileged to work with him at the Bar are proud to have enjoyed his patronage, his friendship and his princely hospitality. He has contributed munificently to several charities and Educational and Social Institutions. If certain persons can be said to have been born with silver spoons in their mouths, it can be truly said of C. P. that he was born with a golden spoon in his mouth and, what is more, that he continues to have it still in his mouth after all these eighty years. May he live long for many, many more years and continue to flourish in all his greatness and glory—a gifted and gracious exponent of the art, technique and æsthetics of Life, Law and Literature.

R. N. AINGAR,

T. V. VISWANATHA AIYAR.

ROLE OF PARLIAMENT IN PROTECTING RIGHTS OF INDIVIDUAL.*

MR. CHAIRMAN AND FELLOW-DELEGATES,

May I, at the outset, offer our sincere thanks to the Polish Parliamentary Group and their Government for the warm and traditional hospitality extended to us, delegates?

We are grateful also to the Secretary-General who has presented us a report which has involved some labour. The note on the " Role of Parliament in protecting the rights of the individual ", though brief, contains most of the matters pertinent to this issue. The Resolution before us believes in the ability of Parliament to strike a balance between individual rights and the maintenance of public order; realises that ultimate safeguarding of Parliamentary Democracy lies in the interest aroused in the individual voter and, finally, believes also in the separation of the Judiciary from the Executive and Legislature to ensure freedom from bureaucratic interference.

My esteemed friend, Lord Birdwood of Great Britain, has, in his note and statement, elucidated the various aspects of individual freedom, mainly in the context of the British system. However, an important aspect has not been sufficiently stressed and that is the paramount need in all democracies for an independent Judiciary. This is a *sine qua non* for the protection of individual rights. Historically speaking, the British example is unique, where there is no written Constitution as such, and where the Parliament is supreme. In the 17th century the *Habeas Corpus Act* of 1679 culminated in the *Bill of Rights* in 1689, wherein the English Parliament protected the rights of the individual. With the evolution of its supremacy and the Cabinet form of Government responsible to it, the Parliament in England has always played a leading role in safeguarding people's liberties.

In the United States of America, there was the *Bill of Rights* which took definite shape by 1791. The role of Parliament there, is not similar to that of Britain, but the bi-party system vouchsafes effective protection of the rights of the individual. The " Separation of Powers " was scrupulously adopted in that great country and the role of the Supreme Court there has been significant and far-reaching.

In France, we had the *Declaration of the Rights of Man* in 1789, and these have been accepted by all the French Constitutions, including the latest of the Fifth Republic. The French have always been traditionally sympathetic to the problem of individual liberty and, through interpellations in Parliament, arbitrary action of Government has been effectively curbed.

In India, which is one of the biggest Democracies represented here today, we have a written Constitution. Part III of our Constitution proclaims and enumerates the Fundamental Rights of the Indian citizen and, in some cases, of even persons who are not citizens. The Articles in this Chapter cannot be modified like those of the other portions of the Constitution and require special majorities for the constitutional amendments. The rights fall into certain categories, *viz.*, the Right to equality, the Right to freedom, the Right against exploitation, the Right to freedom of religion, cultural and educational rights, the Right to property and the Right to constitutional remedies.

In the well-known "Cross Roads cases" (*Romesh Thapper* v. *State of Madras*)[1], in which I had the good fortune of appearing for the petitioner, the Supreme Court of India, speaking through the Hon'ble Justice Patanjali Sastri, declared that the right to move the Supreme Court through a writ was itself a fundamental right.

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* Speech delivered by Sri C. R. Pattabhi Raman, Barrister-at-law, M. P. (India) at Inter-Parliamentary Conference—Sejm—(Parliament) Warsaw, on 2nd September, 1959.

1. (1950) S.C.J. 418 : (1950) 2 M.L.J. 390.

The fundamental rights are : equality before the Law and equal protection to all citizens ; prohibition of discrimination on grounds of race, religion, sex, caste, etc.; freedom of speech and expression ; freedom of assembly and association ; freedom to acquire and dispose of property; freedom from arbitrary arrest and detention ; and freedom of conscience. Any State or Union Law, which abridged or impinged upon the guaranteed rights, could be struck down by the Courts of our land. There are, of course, certain reasonable restrictions on the rights enumerated above in the larger interest of the general public. The Parliament may enact laws in certain cases of preventive detention and the Legislatures of our States may enact laws in relation to acquisition of property for public purposes. Under Article 265 of our Constitution, it is laid down that " no tax shall be levied or collected except by the authority of law ". The Executive cannot, therefore, act in an arbitrary fashion and must act under authority of law enacted by Parliament. We have provision for Presidential Ordinances during the intersession period of our Parliament, but these have to be placed before the House as soon as it meets.

Following the British practice, the Legislatures in India have devised various procedures by which they can keep a close watch over the Executive and fulfil their role of guardians of the people. We have the Question-Hour, Half-hour discussions and Adjournment motions, through which Members of Parliament keep the Ministers of our Government on tenterhooks, as it were. The Members have full privileges to ventilate their grievances on the floor of the House. They, and any member of the public, can also submit petitions to the Legislature, pointing out grievances and seeking remedies. There are in addition, various Parliamentary Committees, like those on Petitions, on Government assurances and subordinate legislation, guarding people's liberties and attending to their petitions. We have, during the annual budget session, many opportunities to express our view-points and to seek redress. The Parliament can refuse to vote a Demand for Grant of any Ministry and, finally, there are the Estimates and Public Accounts Committees of our Parliament to check unwarranted or extravagant expenditure by the Ministries. The Parliament in India has therefore a significant role to play in the protection of the individual's rights, and its procedures have been so framed as to enable it to fulfil its role effectively.

Parliamentary Democracy depends on each and every citizen who must vigilantly exercise his rights. It is the citizen's freedom to criticise the ruling Government, to publicise his criticism and to seek peacefully to effect a change therein that may be called the corner-stones of the democratic edifice. I consider this item on our Agenda to be the most important one. There must be a " *Dharma* ", to use an ancient Indian word, fundamental in character, solemnly declaring and recognising the rights of an individual. However, as pointed out by the note before us, there has also to be an equitable balance between individual rights and public order. We, in India, cannot be slow in catching up with the advanced countries of the world. Parliaments have to pay due regard to public welfare and at the same time to see to it that the rights of the individual are respected.

I conclude by repeating that there must be a well-understood " Separation of Powers " and, without an independent Judiciary, the guaranteed rights would become farcical. It is necessary to have a well-defined Constitution and certain fundamental rights guranteed to the citizens, which cannot, in the usual course, be abridged by Parliament. To ensure obedience of the legislatures to these guaranteed rights, we must have an independent Judiciary. The Judges of that limb of the State should be appointed on their merits and should not be removed ordinarily by the Government and, in rare cases of misconduct, etc., there must be a special procedure for their replacement.

I thank you all fellow-delegates for the patience with which you have listened to me.

BOOK REVIEWS.

The Prevention of Food Adulteration Act, by *Rai Sahib Jainti Prasad Gupta*, Advocate. Published by the Hindustan Law Publishing Company, Meerut —Second edition, 1959 : Price Rs. 7.00 nP.

That a second edition, of the Author's Commentaries on the Prevention of Food Adulteration Act has been brought out within just two years of the first edition is proof positive of its popularity and usefulness. The Commentaries are clear, analytical and exhaustive and the text of the Act and the Rules are given as amended up to date. We are sure the present edition will prove as useful and popular as the previous one.

Specific Relief Act, by *K. N. Bhaumik*, B.L., Published by Eastern Law House (Private) Ltd., Calcutta 13 : Price Rs. 10.

The law relating to Specific Relief, though codified in the Specific Relief Act, is essentially a Judge-made law. The remedy of specific relief is an equitable remedy and the Courts have a great amplitude of discretion in granting or refusing it. There are several classic works on this subject by eminent writers and the Indian Act has also been the subject of several commentaries.

This well got-up handy commentary under review is a useful addition to the existing literature on the subject. The notes under each section are clear and well documented with case law—Indian and English. References are also made wherever necessary to standard treatises like Fry on Specific Performance. We have no hesitation in commending the book to students of law and practitioners.

Indian Limitation Act, by *H. C. Mitra.* Fourteenth edition by B. B. Mitra, B.A., LL.B., Bar-at-law, Advocate, *Supreme Court of India.* Published by Eastern Law House (Private) Ltd., Calcutta 13 : Price Rs. 18.

No other branch of law has created problems to the Bench and the Bar to resolve than the law relating to limitation. A question of limitation cannot be said to fall clearly either under substantive or procedural law and the Courts permit question of limitation, unlike other procedural aspects, to be raised at any stage. The provisions of the Act and its elaborate Articles have been the subject of judicial interpretation for several decades now.

Sri Mitra's Commentaries on the Limitation Act has become a standard work in the field and has been accepted as a reliable and useful book by the Bench and the Bar. Like the illustrious Tagore Law Lectures on Limitation by U. N. Mitra, the present commentary is known by the familiar name of Mitra's Limitation to successive generations of lawyers. We are sure the present edition, appearing as it does after a lapse of several years, will be welcomed by the Profession as a long awaited book.

Digest of Statutes—Central and Kerala—Volume 1—Central Statutes, by *Joseph M. Madathil*, Advocate, Ernakulam (1959). Published by Kerala Law Times, Ernakulam, Kerala State : Price Rs. 15.

In these days of frequent and voluminous legislation no apology is needed for publishing a book of the kind under review. The publication of a digest of all the Central and State Legislations is bound to be of immense use to legal practitioners in the State who have to face and deal with the kaleidoscopic changes in the law in their daily avocation. The first volume containing the Central Acts is self-contained and will be found useful to practitioners all over the country.

It is not pretended by the publishers that the Digest under review provides all that a lawyer would need. It is more in the form of a referencer or index leading to the original sources for further information. The Statutes are arranged in the alphabetical order and the legislative progress of each of the Act is indicated by giving the several amending or repealing Acts with the references to the rules and notifications thereunder. A perusal of the volume shows the indexing to be exhaustive and accurate and we are sure the publication will be found useful by all sections of the profession and the public.

IDENTIFICATION OF THUMB IMPRESSIONS AND CROSS-EXAMINATION OF FINGER-PRINT EXPERTS, by *M. K. Metha*, Examiner of Questioned Documents, Delhi. Price Rs. 12.

In this small booklet of about a hundred pages the Author has given an introductory study of the vast subject of Finger-prints and Cross-examination of Experts. The first eight chapters covering about sixty pages is devoted to the explanation of thumb or finger impressions, the characteristic lines and moulds, their identifications and comparisons and the examination and cross-examination of the expert. The rest of the pages are devoted to illustrative cases before some of the up-country subordinate Courts. As an elementary guide to the subject the book will be found useful to lawyers and examiners of questioned documents.

LAW OF MOTOR VEHICLES IN INDIA, by *Kashikanta Maitra*, Advocate, Calcutta. Published by Parichay Publishers, Calcutta 9. 1959 Edn. Price Rs. 12.

The provisions of the Motor Vehicles Act, 1939 and the rules framed under it have come for frequent interpretation before the Courts in recent years. With the development of road transport and the increased competition for route permits the provisions of the Act and the Orders of the Transport Authorities have been challenged before the High Courts and the Supreme Court. The recent amendments effected by Act C of 1956 and the creation of State Transport Appellate Tribunals have only increased the numbers of applications in the Courts.

The publication under review is a commentary on the Motor Vehicles Act and being latest in the field will find a ready reception among lawyers and carriage operators. With a little more attention devoted to the editing and indexing we feel the book would have served its purpose better.

ARCHBOLD'S PLEADING, EVIDENCE AND PRACTICE CRIMINAL CASES, 24th Edition (1959). Published by Sweet and Maxell, Ltd., Chancery Lane, London W. C. 2., Agents in India N. M. Tripathi (Private) Ltd., Princess Street, Bombay 2.

It is needless to introduce to the Legal Profession this classic work popularly known by the Author's name alone. Archbold's Criminal Pleadings, though it deals with the English Law, has become an indispensible book of reference to the practitioners on the criminal side and to the students of Criminal Law and Procedure in India as well. Essentially a book on the procedural law, the book also deals with several aspects, of the substantive law as well. The present edition incorporates the recent statutory provisions in England as well as the decisions up to date. Without losing its utility and value it has been printed and edited in a way which makes it more useful as a practitioner's book. The elaborate Table of cases and Index and the Publisher's system of supplying the periodical Noter-up and Cumulative supplement will enhance the utility of the book to the Practitioners.

LAW AND CUSTOM OF THE SEA, by *H. A. Smith*, D.C.L., (Lond.) Stevens & Sons, Ltd., 1959, Third edn. N. M. Tripathi (Private) Ltd., Bombay. Price 21sh.

Prof. Smith's Law and Custom of the Sea is an admirable hand-book to the men of the Navy. It explains in simple language the rights and duties and obligations and liberties of sea-going officers whether in charge of battleships or merchants' vessels. The book is divided into two parts in war and in peace. The importance of this branch of the law cannot be over-emphasised as the sea covers a larger part of the world than land and with the advancement of trade and development of technical knowledge the activities of men on the seas has become as familiar and necessary as their activities on land. In the background of the two World Wars the problem of Territorial waters, High Seas, War at sea, Blockade, Capture, etc. have gained great significance in International law. As a guide to this vast and ever-growing branch of the law the book under review will be welcomed by lawyers, service-men and politicians alike.

NATURE OF CHANGES INTRODUCED BY HINDU SUCCESSION ACT, 1956, IN THE LAW OF INHERITANCE OF WOMEN

By

S. VAIDYANATHAN, *Advocate, Madras.*

The enactment of the Hindu Succession Act, 1956, is a landmark in the evolution of the Hindu Law of Inheritance. To appreciate the nature and extent of the changes made by the Act with regard to women, it will be useful to state in broad outline the general features of the antecedent law on the subject.

2. Before the enactment of Central Act II of 1929, in all the jurisdictions governed by the Mitakshara, other than the Provinces of Madras and Bombay, no female except the wife, daughter, mother, father's mother, paternal grand-father's mother and the wives of the paternal ancestors upto the seventh degree[1] had any rights to inherit the separate property of a Hindu male. Thus even such near relations of a Hindu male as his son's daughter, daughter's daughter and sister had no heritable rights. In Bombay and Madras, however, a more liberal view had prevailed on the subject, the law in Bombay being more progressive than that in Madras in recognising the widows of all gothraja sapindas upto the seventh degree including those of descendants and collaterals as entitled to inherit in preference to male gothrajas in a remoter line. Both in Bombay and Madras, daughters born in the family of descendants, ascendants and collaterals within five degrees were recognised as heirs, being Bandhus. The sister, however, occupied a higher place in the Bombay scheme of succession than the one assignable to her as a female Bandhu. Central Act II of 1929, however, altered the order of succession in all the provinces subject to the authority of the Mitakshara by enabling the son's daughter, daughter's daughter, sister and sister's son to inherit the separate property of a Hindu male dying intestate in the order stated above next after the father's father and before the father's brother. Under the Dayabagha law no female other than the widow, daughter, mother, father's mother and paternal grand-father's mother had any heritable rights in a Hindu male's property be it his separate property or an interest in joint family properties. Central Act II of 1929 did not apply to Hindus governed by the Dayabagha. The Hindu Women's Rights to Property Act, 1937, conferred a right on the Hindu widow to succeed to her husband's property along with his son, grandson or great-grandson. Similarly the Act conferred rights of inheritance on the widowed daughter-in-law and the widow of a predeceased grandson in the same manner as a son or grandson as the case may be. These rights are available to the women referred to above in both the Mitakshara and Dayabagha systems. Further, under the Act the interest of a Hindu male governed by the Mitakshara in joint family properties devolved on his widow at his death on the theory that she was his surviving persona. Both before and after the enactment of this Act, all women except in the Province of Bombay, could only hold a Hindu woman's estate in properties inherited by them. In the Bombay Province daughters born in the family such as the male owner's daughter, his sister and the other female heirs of his recognised as such in that Province, took the inheritance absolutely and not for the limited Hindu woman's estate.

3. So far, we have dealt with the heritable rights of women in the property of a male. As regards 'Stridhana' or the property of a woman, the position was more complicated. The rules governing succession to Stridhana were neither simple nor uniform. In order to determine the heir-at-law of a Hindu woman a number of factors had to be taken into consideration, such as the school of law to which she was subject, her status at the time of her death, whether she was a maiden, a married woman or a widow, the form of her marriage and the character of the property held by her. It may be stated generally, though the statement is too

1. Mitakshara II V. 5 and *Jogadamba Koer* v. *Secretary of State*, (1889) 16 Cal. 367 at 373.

broad to be strictly accurate, that females and the female line were preferred to males and the male line in succession to Stridhana. In properties inherited by women as the heirs of women they had only the qualified estate known as the Hindu women's estate, except in the Province of Bombay where they took absolutely. Apart from the Mitakshara and Dayabagha rules of inheritance, there were in vogue in Malabar and Canara the Marumakkatayam and Aliyasantana systems of inheritance based not on the Sanskrit commentaries and Digests but on custom as modified by recent local legislation. Having regard to the matriarchal pattern of society prevalent in these areas it may be stated broadly that under these systems the rights of women in regard to inheritance were in some respects superior to those of women elsewhere. One important feature of these systems has to be specially noted. The Hindu woman's estate so familiar in the Mitakshara and Dayabagha law is unknown to and not recognised by the Marumakkatayam and Aliyasantana laws.

4. We now proceed to examine the features of the Hindu Succession Act to assess the range and sweep of the changes effected by the said Act with regard to the rights of women in the matter of inheritance. The position of the widow, who, prior to 1937 could only inherit her husband's estate in the absence of his son, grandson or great-grandson and who after 1937 took along with these lineal descendants the same share as a son, though for a Hindu woman's estate, has undergone important changes under the 1956 Act. In some respects her rights have been enlarged, though in some respects her rights have been curtailed. In the Mitakshara jurisdictions she now inherits jointly with the relations specified in Class I of the Schedule to the 1956 Act not only the separate properties of her husband but also the share to which he was entitled in the properties of the joint family of which he was a member at his death. Thus her position is assimilated to that of the Dayabagha widow. The Hindu Women's Rights to Property Act, 1937, has been repealed by section 31 of the Hindu Succession Act, 1956. It is therefore now no longer possible for the Mitakshara widow to have in the property held by her husband in coparcenary the same interest as he had at the time of his death. But as stated already, for all practical purposes this does not by itself affect her rights to her prejudice. But, whereas under the 1937 Act the widow inherited her husband's estate jointly and along with only his three male lineal descendants or with the widows of the said lineal descendants who had predeceased him, now after the 1956 Act she has to share the inheritance not only with the abovementioned persons but with several others, such as the mother, daughter and the other relations specified in Class I of the Schedule to the Act, if they happen to be alive at the time the inheritance opens. It has been pointed out[2] that it is quite possible for all the eleven other relations mentioned in Class I to be alive to share in the inheritance jointly with the widow, thereby reducing her share considerably. This is the inevitable consequence of the principle of simultaneous succession enunciated in section 9 of the Act. One other important change made in the general Hindu Law with regard to the widow's right of inheritance may be noted. Chastity on her part was, under that law, a condition precedent to her right to inherit her husband's estate. There is a conflict of judicial opinion on the question whether this requirement as to chastity has been abrogated after the enactment of the Hindu Women's Rights to Property Act, 1937. A reading of the Hindu Succession Act as a whole in the light of section 28 thereof appears to imply that unchastity in a woman is as such not a disqualification for the purpose of heritable capacity. Even under the general Hindu Law, the rule as to chastity being a condition precedent for inheritance was confined only to the wife and not to other female heirs. Before leaving the topic of the widow's rights under the latest Act, it has to be observed that the Act does not depart from the rule enacted in the 1937 Act that if the deceased had left more widows than one, all of them together take a share equal to that of a son. *Vide* section 9, rule 1 of section 10 of the 1956 Act.

2. *See* the Article on "The Hindu Succession Act" by Prof. S. Venkataraman in (1956) 2 M.L.J. 60 at page 63 (Journal).

5. Next, we shall deal with the daughter's rights under the latest Act. The Act has effected a far-reaching improvement in her position as regards her father's estate. Under the prior law she acquired on his death—of course she had none during his lifetime—no interest in his coparcenary property. Even in respect of his separate property she came in as an heir, only in default of sons, grandsons and great-grandsons and widow. As between the daughters themselves under the Mitakshara a maiden excluded a married daughter. As between married daughters, the one that was indigent was preferred to the one that was wealthy. Similarly the Dayabagha had its own special rules of preference and exclusion of daughters *inter se*, on grounds of maidenhood, married status and their being barren or having male issue. All these rules of preference and exclusion peculiar to the Mitakshara and Dayabagha have been swept away by the 1956 Act. It confers on the daughter a right to inherit both the separate property and the undivided coparcenary interest of her father along with the other heirs specified in List I of the Schedule to the Act. Each daughter if there are more than one takes in her own right her share and not together jointly as in the case of widow. There is no discrimination or preference as between daughters on any of the grounds detailed above. Thus the daughter has gained substantial advantages under the Act. The Act further confers on her surviving children if she happens to predecease her father, the right to represent her and take the share she would have taken if alive at her father's death. Thus, the position of the predeceased daughter is equated to that of the predeceased son and the children of both can represent and take the share of their respective parents at the time the inheritance opens.

6. The widowed daughter-in-law and the widow of the predeceased grandson of a Hindu male who obtained their rights of inheritance under the 1937 Act, figure also as heirs in the list of simultaneous heirs specified in Class I of the Schedule to the 1956 Act.

7. The position of the mother under the Act may now be examined. Under the general Hindu Law, she had only rights of maintenance in the coparcenary property of her son. Even in respect of his separate estate, she came in only as a late heir, taking only in default of the heirs upto and inclusive of the daughter's son. According to the Mitakshara the mother comes before the father in the line of heirs. Under the Mayukha and Dayabagha, the mother is postponed to the father. Under the Act of 1956, the mother succeeds both to her son's separate estate and coparcenary interest, as a simultaneous heir along with the relations mentioned in Class I of the Schedule. The father, it is interesting to note, is not in this class but relegated as the first heir in Class II and he can therefore inherit his son's separate property only in default of all the relations in Class I.

8. Of the three women on whom heritable rights were conferred by Central Act II of 1929, in the Mitakshara provinces, *viz*., the son's daughter, the daughter's daughter and sister, the first mentioned two will now inherit in all the jurisdictions as Class I heirs. The sister about whose exact place in the line of heirs in Bombay Province there has been some unresolved controversy after the enactment of the 1929 Act, is now placed in Class II of the Schedule to the 1956 Act and can therefore inherit her brother's separate property only in default of the relations in Class I and the father. She has to share the inheritance, however, with the son's daughter's son, son's daughter's daughter and brother, if these relations are alive at the date the succession opens.

9. Besides the female heirs referred to and considered above the daughter's son's daughter, daughter's daughter's daughter, the father's mother, step-mother, brother's widow, father's sister, mother's mother and mother's sister are the only other women who are specifically referred to as heirs to the separate property of a deceased male and all of them appear in Clause II.

10. Central Act II of 1929 stands repealed by section 31 of the Hindu Succession Act of 1956.

11. Besides the female relations expressly mentioned in Class I and Class II of the Schedule to the 1956 Act, it would appear that women can now inherit a man's separate property as either agnates or cognates as the case may be in default of all the heirs in Classes I and II by virtue of section 9 read with section 12 of the Act, sex as such being no ground of disqualification under the Act. So far we have dealt with the rights of women to inherit a man's property.

12. As regards succession to a woman's property, the law has been simplified in a remarkable manner. Section 14 of the Act of 1956 enacts the most radical and revolutionary of the changes introduced by the Act by declaring that all property " possessed " by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner thereof and not as a limited owner. " Property " is defined in the *Explanation* to the section in the most comprehensive language as including every species of property howsoever acquired by a Hindu woman. The only exception which, on examination, will be found to be not an exception at all in the real sense, is property acquired by a woman under a grant, gift, will, decree or award with an express restriction as to the duration of the estate. It is needless to point out that even if a property was held by a Hindu male under similar circumstances, his ownership therein will be qualified by the restrictions imposed by the grant, gift, will, decree or award as the case may be. Reverting to section 14, it abolishes in one stroke for the whole of Hindu India the Hindu Woman's Estate. The word " possessed " occurring in sub-section (1) of section 14, has given rise to some interesting and practical problems and the Courts are gradually clearing up the ambiguity by the process of judicial interpretation There is some slight conflict of judicial opinion on the point, but the better opinion appears to be that the right conferred by section 14 on a Hindu woman is one purely personal to her and the section should not be so construed as to confer on pre-1956 alienee from the holder of a Hindu woman's estate the benefit of the enlargement of the limited estate into an absolute one.

13. The rules of succession in regard to a woman's property are laid down in section 15 of the Act and these supersede the elaborate and complicated rules under the general Hindu law. The principal feature of the new rules is that the son is allowed to take his mother's estate along with her daughter and can no longer be excluded by her. This is in line with the corresponding right given to a daughter to share her father's property with her brother. Parallel with the right given to a widow to share the estate of her husband with his son and daughter as a simultaneous heir, the husband is made to inherit his wife's estate simultaneously with the son and daughter. Thus, the husband, son and daughter inherit jointly and simultaneously a woman's property as her first heirs, each taking an equal share. Section 16 provides for the children of a son or daughter who had predeceased the female propositus to represent their respective parents in sharing the inheritance of the said propositus. In the absence of son, daughter, and husband, the property of a woman goes first to her husband's heirs, and in their default to her parents, and thereafter to her father's heirs and finally to her mother's heirs. The rule is, however, subject to an important qualification and it is this : If the property of a woman to which succession is claimed had been inherited by her from her parents, it is provided by section 15 (2) (*a*) of the Act that it shall devolve in default of her children not upon the other heirs specified in sub-section (1) of the section, but upon her father's heirs. Likewise the property inherited by a woman from her husband devolves in default of her children only on the heirs of her husband to the exclusion of the other heirs mentioned in sub-section (1). *Vide* section 15 (2) (*b*) of the Act.

14. This survey of the changes made in the inheritance rights of women by the latest legislation of 1956 would be incomplete without a reference to the provisions of sections 7 and 17 of the Act whereby the rules of inheritance under the Marumakkatayam and Aliyasantana laws are superseded by the rules laid down by the Act subject, however, to a few minor modifications which do not materially affect the general principles of the Act.

"HINDU DIVORCE LAW—ITS HISTORY"*

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In spite of India's long contact with foreigners, Hindu life in its intimate and personal spheres was left untouched by notions of foreign law for a considerable time. Hindu law in marriage, adoption and inheritance was administered according to Shastric texts and recognised customs and usages in the country. Neither under Muslim rule nor during British regime were these issues ever moulded or controlled according to foreign legal ideology. The reasons might have been political or otherwise but the fact remains that preservation of the personal law of Hindus was the determined policy of both Muslim and British Rulers.[1]

Due to lack of detailed historical documentation of the whole of Muslim period it is difficult to find substantial evidence to support the above statement; nevertheless it can be undoubtedly said that the personal laws of Hindus were not altered by Muslim Monarchs. The changes made in Hindu law by Muslim Rulers were in the field of land law and criminal law. These were drafted according to principles of Muslim Jurisprudence. During British rule since the establishment of Crown Courts in India the same policy was followed. As early as 1753 suits among "natives" were excluded from the jurisdiction of the Mayors' Courts—the first Crown Courts in India. The Charter Act of 1781 provided that in the Supreme Courts 'all matters arising out of inheritance and succession to lands and goods and all matters of contract and dealing between party and party shall be determined, in the case of Mohamedans by the laws and usages of Mohamedans and in the case of Gentoos by the laws and usages of Gentoos.' The Diwani Adalats since their establishment were directed to decide all cases of inheritance, marriage, caste and other religious usages and institutions according to the 'laws of the Shastra; with respect to the Hindus. The High Courts created by Charter Act of 1861 were also directed to follow the same civil law as was followed and applied by the Supreme Courts and the Sadar Diwani Adalat. Thus the High Courts also decided disputes of natives according to their personal laws and customs.[2]

Simultaneously with the establishment of High Courts is seen the emergence of the era of codification. After the establishment of the first Indian Legislative Council in 1830 began this era of codification and legislative reforms. Hindu Law of contracts was totally superseded in 1872. A chain of legislative enactments commencing in 1850 brought about considerable changes in Hindu Law of inheritance. But the Hindu law of marriage and adoption was not affected even in this sweeping period of legislative reforms.

Therefore, to analyse the legal concept of Hindu marital relations we have to begin with Vedic and Shastric texts and the customs and usages of Hindus as interpreted by judicial authorities from time to time. An attempt is made here to trace briefly the process by which divorce was introduced in Hindu law as a remedy for ills arising out of unsatisfactory marital unions.

Divorce as a remedy for matrimonial ills appears to us as something alien, and even to-day after our law-makers have engrafted it upon our legal code the term jars upon our ears, for it has been generally unknown to our socio-legal ideology. To begin with it was sporadically introduced in certain States and then extended in 1954[3] and 1955[4] so as to be applicable to the entire community.

The present-day law of divorce is the result of various environmental factors, social, political and economic. For hundreds of years we have lived and rubbed shoulders with a foreign culture group and as a natural consequence our people have absorbed some of their ideas of social existence. The cry for emancipation of the individual raised in the West has not failed to reach our ears. It is reflected in the recently enacted laws of our land. Hindu community with its roots deep in ancient Aryan culture has with the rest of the world gone through the upheaval

1. Rankin.
2. (1880-81) I.L.R. 5 Bom. 154, 173.
3. Special Marriage Act, 1954.
4. Hindu Marriage Act, 1955.

of two world wars and is now facing the greatest battle of modern age in the Industrial revolution. The Benthamite slogan of *lassiez faire*, wartime emergencies with their concomitant hardships and the change from an agricultural to an industrial structure of life all tend in one direction, *viz.*, the breaking up of the closely-knit family unit. The well-known formulae of individual endurance and personal sacrifice for the sake of the group, *i.e.*, the home, family or clan seem to lose their significance and become almost inaudible in the uproar and the drum-beating of the doctrine of individual freedom. Our normal standards of decency and refinement around the hearth and home, about morality and culture are apt to be distorted in the cold and cruel atmosphere of a wartime economy and its emergencies. The individual has no time to plan and lead a life in accord with his ordinary notions of propriety and rectitude. He just eats, sleeps and destroys others to preserve himself. The poet in him turns into the soldier of the battle-field. Industrialisation means rapid movement and mobility in every sphere of life. Quick changes are prone to affect stability and tradition in values of life. They put a severe strain on old concepts such as sacramental character of marriage. There is besides the march of science which decries emotion and faith as factors that affect right thinking and asks us to guide human existence solely by reason and logic. It has shown that the institutions of marriage and home may be necessary for other purposes but that they are not indispensable for preservation of human species as test tube babies may be produced in laboratories, and may be brought up in common homes (Soviet idea). Such environmental conditions could not leave any community without stamping their natural effects upon it.

Vedic and Puranic period.

Going back to early Hindu law, *i.e.*, in the Vedic period we find the general rule that divorce is not approved and marriage is a lifelong union unbreakable by any human agency. The origin of marriage among Aryans in India as among other ancient peoples is a matter for the science of sociology. We find that at the commencement of Rig Vedic age marriage was a well-established institution and the Aryan ideal of marriage was very high[5]. In the Vedic period sacredness of marriage was emphasised and the family ideal was high and often realised[6]. Marriage, the most important of all samskaras, was highly thought of as an institution. We know of no stage in the Indian society when promiscuity was in practice, and there existed no institution of marriage. In Vedic literature there is no hint or suggestion about a society that had sex relations promiscuous and unregulated.[7]

Though there is a reference to some former period, when men lived a life devoid of any control, this was put to an end to by Shetaketu, son of Uddalaka of *Uttara Kuru*[8]. Since then mutual chastity between spouses was the rule, and any contravention of this principle was regarded as a great sin incurred. A reference in Mahabharata (Sabha Parva—31 pages 37-38) is found about unchaste standards in married life in the area of Mahishmati, but the reason for this licence is attributed to these people possessing extraordinary supernatural powers. These references seem to be more poetic than statements relating to actual facts. As regards divorce there is no reference to it in the Vedic texts, nor is there much discussion of the subject in post-Vedic literature. The theory of Dharmashastra-writers is that marriage when completed by Homa and Saptapadi is indissoluble.[9]

Smritis.

Smriti-writers like Manu say, " Let mutual fidelity (between husband and wife) continue till death; this in brief be understood to be the highest Dharma of man and wife.[10] The same writer further remarks, " Neither by sale nor by

5. Mandlik, 396, Mahabharat (Adi Parva Ch. 122).
6. Vedic Index, 1, 484, 485, C.H.I., 1, 89 Rig. Ved., x, 85.
7. Women in Vedic Age.
8. History of Hindu Dharma Shastras (Kane), Vol. II, Part I, p. 42, Mahabharat (Adi Parva : Ch. 113, p. 122).
9. Kane—History of Hindu Dharma Sastras, Vol. II, Part I, p. 619.
10. Manu IX, 101.

desertion is the wife released from the husband ; we understand that this is the law ordained by the Creator in former times."[11] Vishvarupa in his commentary on Yajnavalkya says, marriage is a Samskar, even if the husband or wife become Patita (debase); the Samskar does not end or become annulled by the later fact of adultery; she still remains a wife and consequently after purification no fresh marriage ceremony is needed. He says that even a total abandonment of wife by the husband or his entering into other marriages does not amount to divorce, *i.e.* (dissolution of the marital union), the marriage is still intact.[12]

Thus divorce in the ordinary sense of the word was unknown to Smritis and to Hindu society for about two thousand years except among the lower castes on the basis of custom recognised in their group.[13] Even a wife abandoned on account of her infidelity was entitled to a starving maintenance, as the marriage tie was supposed to remain intact in spite of her abandonment. Her maintenance was stopped only when she conceived as a result of adultery.[14]

According to Mitakshara a wife is not under the control of her husband as long as he remains *Patita* (debase) and she should wait till he makes penance and becomes pure, when he can again be restored to her.[15] Thus even a debased husband cannot be divorced. The Smritikaras (except for a few like Narada and Parasara) find no occasion where a wife could break the marriage tie for any reason whatsoever.

Kautilya[16] has also given expression to views similar to other commentators. Only the changed times appear to give colour of liberality to his opinions. He is agreed on the basic fact that marriages in the approved form cannot be dissolved. He adds, however, that though a wife hating her husband cannot be released from the husband if he be unwilling nor can the husband release himself from his wife if she is unwilling but if there be mutual hatred or aversion then a release is possible. He further states that in cases where there is danger of injury from one party to the other a release is possible. This means that the marriage entered in the Brahma, Arsha, Prajapatya and Daiva forms (the approved ones) it cannot be dissolved. But on the other hand if the marriage was entered in Gandharva, Asura or Rakshasa form it may be dissolved by mutual consent of the marrying partners in case where both hate each other. Only one-sided aversion is not a good ground to dissolve the marital union even in an unapproved form excepting in situations where danger or fear of injury exists. This distinction between marriages in approved and unapproved forms is Kautilya's own. It is not upheld by Courts or other authorities. Even modern writers like Mayne take the same view, *viz.*, that marriage in approved forms is indissoluble except by custom. Marriage in Hindu law is a holy union for the performance of religious duties.[17] It is not a contract entered into between parties but a sacrament performed by parents or guardians.[18] Though a husband is declared " owner of his wife ", he cannot dispose her of by gift or sale according to Yajnavalkya and other sages she being enumerated as one of the objects unfit to be given. Manu also says that a wife cannot be detached from her husband either by sale or by abandonment, implying naturally that the marital tie cannot be severed in any way, it being indissoluble by its very nature. It follows from the above that Hindu law does not recognise a divorce, meaning thereby the severance of a marriage already completed under the law.[19]

Sen throws further light on the peculiar nature of marital union amongst Hindus. He explains the position by saying that a Hindu family is peculiarly constituted and when a new member joins it by adoption or by marriage, he or

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11. Manu IX, 46.
12. Vishvarupa on Yajnavalkya, III, 253-254.
13. Kane—History of Hindu Dharma Shastras, II, Part I, 620.
14. Manu XI, 177 ; Narada, XII, 91 : Gautama XXII, 35 ; Yajna, I, 7.
15. Mitakshara on Yajnavalkya, I, 77.
16. Artha Shastra, III, 2. (300 B.C.).
17. *Sundarabai* v. *Shivnarayan*, (1908) 32 Bom. 81.
18. *Purushottam* v. *Purshottam*, (1897) I.L.R. 21 Bom 23, 30-31 ; *Atma Ram* v. *Barku Mal*, (1930) I.L.R. 11 Lah. 598 ; *Ratneshwari* v. *Bhagwati*, (1949) F.C.R. 715 : (1950) S.C.J. 514 ; *Moujilal* v. *Chandrabati*, (1911) I.L.R. 38 Cal. 700; *Venkatacharyula* v. *Rangacharyalu*, (1891) I.L.R. 14 Mad. 316-18.
19. Sen; Hindu Jurisprudence, T.L.L. 283.

she becomes so deeply engrafted into the family frame that the idea of severance of the tie becomes an impossibility. So when a man marries, the wife brought into family becomes, as it were a limb of an organised whole and she could not cut herself off even in case of death of husband for she could live with the part of the family that was still alive and did not cease to exist due to the husband's death. Naturally therefore the question of dissolution of a Hindu marriage cannot arise.

Revolutionary Text of Parasara.

Surprising as it may appear we come across the following revolutionary text in Parasara.[20] 'नष्टे मृते, च संन्यस्ते क्लीबे च पतिते पतौ पञ्चस्वापत्सु नारीणां पतिरन्यो विधीयते'।

(Another husband is ordained for women in five calamities, *viz.*, when the husband is lost, is dead, has become a sanyasin, is impotent or Patita.) It will be seen that this text embodies an idea which is wholly inconsistent with the general trend of Hindu thought. Some explanation has to be found for the view embodied in the above text.

The desire for a male offspring in particular was natural in all early societies, a male issue was prized both for the continuance of the family as well as for the performance of funeral rites. As it was essentially an agricultural group and believed in the theory of re-incarnation, it was no matter for surprise that the Hindu community attached special importance to possession of a male issue. He could be a helping hand in tilling the land, and according to their belief, could be of help in their achieving heaven. He could pay off the undischarged debts of a deceased father and thus release him from the torture of Put : hell. By certain rituals a son could help his deceased father attain peace hereafter. Such material and spiritual advantages were strong reasons for a Hindu's desire for male offspring. It is highly probable that these considerations were the root-cause of the Niyoga Pratha, *i.e.*, which in exceptional circumstances allowed a wife to have a son by a man other than her husband. Though it was neither a usual practice, nor was it encouraged or popularly liked, still it is a practice referred to in ancient texts and was resorted to in certain cases.[21]

May be that Niyoga was the doorway to the institution of divorce as such, or to remarriage of a Hindu woman in the life of her husband by nullifying the former marriage, in exceptional cases. But this text which has been the subject of everlasting controversy is not even interpreted to mean divorce by every commentator. Much controversy has raged around this verse. Some hold the view that this text is not meant for Kaliyuga. Others like Medhatithi explain it by having resort to technical rules of grammar that the word पतौ not being the correct plural of पति is used in the verse for guardian and not for पति. As an answer to this criticism it can be suggested that पतौ can mean पति also for the verse is composed by Rishis and it may be an आर्ष प्रयोग as Rishis are not always grammatically correct.

Somehow the Courts in British India did not agree with the interpretation of the text for allowing divorce in Hindu community. Neither do we find any evidence of the practice of divorce in the Hindu period known to historians. Nor is there during the Muslim period any trace of prevalence of such a practice. This was a time when it could easily be established due to the impact of the ideas of the ruling race. The Muslims recognised divorce as an important feature of their law of marriage.

There were reasons why British Courts did not accept divorce as a practice sanctioned by Hindu Law. Firstly, they only accepted Manu as the foremost

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20. Parasara IV, 30.

21. Rig Veda, VII, 5, 8; Manu, V, 150-160 ; Vishnu, XXV, 17 ; Mahabharat the great epic of Hindus (author unknown) the whole story begins with Niyoga practice.

authority amongst various Smritikaras and Manu was against such a practice, secondly, even other text writers were not unanimous in dealing with the practice of divorce as lawful and permissible amongst Hindus; thirdly, because the social conditions refused to have any place for a proposition like divorce, and fourthly because no declarations by Pandits in the early British Courts supported it. Thus eventually Hindu Law was held not to allow divorce except where it was sanctioned by custom.

In our great Epic the Mahabharat episode of Nala and Damayanti is an illustration of the text quoted from Aparak. Here the husband had not been heard of for a considerable length of time and so Damayanti's father a ruler of high caste arranged for her remarriage, suitors came to be selected by her, but at the nick of the moment Nala turned up and so remarriage did not take place. This is clear evidence in favour of remarriage during husband's lifetime in ancient Indian period. Still it is a Pauranik Katha (Mythological theme) and is not dependable.

The digest compilers and other commentators are possibly correct in saying that the verse of Parasara and such practice is only for a former age not for today *i.e.* for Kaliyuga. Others have suggested that the word used in the text denotes 'guardian' and not 'husband' so it is a release from the guardian and not from the wedded spouse. According to Bannerjee this text relates either to a very primitive stage of Hindu community in which rapid multiplication was the main goal, or it is only evidence of a difference of opinion existing among the Hindu sages on a point on which unanimity of opinion can hardly be expected. As a matter of fact the idea of a second marriage of a Hindu woman is quite repugnant to Hindu social order.[22] Even permitting authorities do it with reluctance, for Narada says, that a twice married woman (known as Punarbhu) is not very different from a disloyal wife, and it is never for a virtuous woman to do so.[23]

Probably this text implies divorce, but the high moral standards in the community never gave a chance to people to depend upon the text authority and use it to obtain divorce. And consequently, a long period of disuse has given it a very dubious and unauthoritative status. No Courts or higher caste social groups are ever found to accept it as good law.

All writers and Judges and social decision makers unanimously refuse to accept practice of divorce in the Hindu community in upper classes, except on the basis of custom.[24]

Customary Divorce.

Among the lower castes it is neither infrequent nor unlawful to divorce a husband and marry another. This practice is based on custom. Amongst Sudras, re-marriage during a husband's life is not prohibited and is done by Pharkhati or Soda Chitti (releasing process).

These marriages are called Pat in Maharashtra, Natra in Gujarat and Udoki in Cannarese district. Sometimes even the caste group gets together to end the first marriage and allow the wife to re-marry. It is also known as Trin Tora in Northern India.[25]

Among aboriginal races and groups which had not come under Brahminical influence re-marriage does exist. Amongst Jats in Punjab a deserted woman is allowed to re-marry and get the status of a legal wife.[1] Same is true of Lingayats of South Kanara.[2]

Strange, an authority on customary practices in India also says that divorce by custom prevails and it is permitted in some places[3]. Keeping in view the

22. Banerjee, Hindu Law of Marriage and Stridhana, pp. 187-188.
23. Narada XII, 46-54.
24. *Jiva Magan* v. *Bai Jethi*, I.L.R. (1941) Bom. 434.
25. Steele, Law and Customs of Hindu castes, 26, 167-168.

1. Mayne, Hindu Law, Ch. IV.
2. Punjab Customary Law, II, 131, 74, 190, 192, 193, 195.
3. Strange, 1, 52.

prevalence of the practice among certain communities and relying upon writers on Hindu Law, Indian High Courts have recognised dissolution of marriage followed by re-marriage of both the spouses in certain communities. There are a number of cases where Judges have given effect to such a practice; though they always begin with the statement that divorce is an unkown incident of Hindu marriage but can be upheld in the recognised form on the basis of established custom. Judicial authorities in Calcutta, Bombay, Nagpur and N. W. P. have dealt with such cases and allowed dissolution.

In the N.W.P. Sadar Diwani Adalat in case of Must : *Emmertee* v. *Nirmal*[4] the Court declared that, "loss of caste by a Hindu husband cannot dissolve his marriage, or justify his wife's re-marriage or bar his claim over her person. A caste custom contrary to this cannot be pleaded unless proved to be corroborated by Shastras and it is the party preferring the plea who is to prove its existence". So it would appear that the Court did accept the practice of customary divorce.

In another case *Sheo Lal* v. *Kasi*[5], the same Court again declared that in Hindu Law there can be but one marriage unless there is justifiable cause to rescind the first one.

Bombay High Court has the longest list of decisions on divorce based on custom. In one case[6] the Court refused to accept a custom that permitted re-marriage amongst Gosavi community without getting a release from the first marriage with the first husband's consent. The Court was against this particular practice, *i.e.*, of re-marriage without putting an end to the previous marriage, but did not refuse to accept divorce as a custom. In another case[7] the Court refused to accept a custom of Pakhali community, which allowed divorce simply by payment of a sum of money fixed by the caste. The Court held such a custom to be immoral and improper and opposed to public policy within the meaning of section 23 of the Indian Contract Act as well as under Hindu Law, where no divorce is the general rule and allows it as a reluctant concession. In *Rahi* v. *Govind Valad Teja*[8] the same Court held that amongst Sudras re-marrige prevails and the sons of Punrbhu (re-marriage) by a duly contracted Pat marriage, *i.e.*, in accordance with the custom of the caste, are legitimate, and as to the right of inheritance and extent of shares, rank on par with the sons of 'lagna' marriage (previous marriage). But Pat without divorce by the License named as Chor Chitti (released documents) is adulterous union ; divorce is essential for re-marriage. In *Khem Kore's case*[9], the Court dealt with a Brahmin couple, known as Sompura Brahmins doing the work of stone-cutters. The lower Court's finding was that the parties were Sompura Brahmins and had the practice of Natra (re-marriage) among them. But the High Court could not recognise the remarriage in this case as the wife had not taken the consent of her first husband to revoke the previous marriage and without this the second marriage was illegal. Still on the authority of texts maintenance was ordered giving the woman the status of a concubine to the second husband. In another case[10] the Court decided that in Pakhali caste of Ahmedabad a custom of divorce with mutual consent of the spouses is not repugnant to law in general or Hindu law in particular, and also referred to 'Tribes and Castes of Bombay' by R. E. Enthoven, Volume 1. In this case a distinction was clearly made between the custom where consent of the husband is taken in revoking the existing marriage before re-marriage and the custom where it is done without such consent. The latter was not recognised as valid and proper and was rejected by the Court as being invalid.

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4. N.W.P. (Digest), Sadar Dewani Adalat, p. 410 No. 67, June, 1864, p. 583.
5. N.W.P. (Digest) Sadar Dewani Adalt, 410, June 8th, 1865.
6. *Bharathi* v. *Bharathi*, (1878) I.L.R. 2 Bom. 140.
7. *Keshya Mangovan* v. *Bai Gandhi* (*Minor*), *by her father*), (1915) I.L.R. 39 Bom. 538.
8. I.L.R. 1 Bom. 97.
9. *Khemkore* v. *Chunashankar Ranchor*, (1873) 10 Bom. M.C.Rep. 381.
10. *Pakhali Jiva Magan* v. *Bai Jethi*, 1941 Bom. 535.

In another case[11] the Court held that the caste punch (village headman) has no authority to grant Pharkati (release) by himself. The parties were Kumhars (Potters) and the husband was unheard of for more than seven years, and so in a Panchayat meeting the relatives of the wife obtained a release by paying a certain sum of money and later she entered into a marriage in Natra form. The High Court accepted the finding of the lower Court that such a custom in that group exists but held

"the principle stated in former cases refered to before (*Hargovan Gandhi* and *Reg.* v. *Shambhu Raghu*) was that the Court does not recognise the authority of the case to declare a marriage void and we shall stick to the same rule."

In another case divorce without the consent of the husband was declared ineffectual and re-marriage held illegal. Even though the lower Court had found that such a custom does exist in the Talpode Koli caste to which the parties belonged. The High Court refused to accept any such custom and observed that such a custom does not exist in Koli caste. It relied for its view on Strange : (3rd ed. 1859, p. 52) and declared that such a custom was against 'public morality.'[12]

In another case where the parties were again Koli by caste the same High Court decided that divorce and re-marriage are allowed when husband's consent has been taken. It further held that simply because a sum of money was accepted by the woman's father to pay it to the former husband to get release, the transaction shall not be deemed to be illegal.[13]

Probably the emphasis on the element of consent by the husband is due to early cases like *Dayaram*[14]. *Doolbh* v. *Bae Umba Bellasis*[11], where it was decisively said that in Lewa Koombhi caste, a woman cannot under any circumstances obtain a divorce from her husband without his consent.

Calcutta High Court also has taken a similar view. In *Kundomee Dasi's case*[15] the Court stated that "though Hindu Law does not contemplate divorce, still in those districts where it is recognised as an established custom it would have the force of law."

The plaintiff belonged to Assam and was a Hindu.

Madras High Court followed the precedent, and has in several cases upheld divorce on ground of custom. In *Chetti's case*[16] the Court observed that there was nothing immoral in a caste custom by which divorce and remarriage are permissible on mutual agreement. Nor would the payment by one party to the other of the expenses of the latter's original marriage render the transaction illegal. Parties were Potters by caste of Tinnevelly. The Court opined :

"We do not see that it is immoral, since it does not ignore marriage as a legal institution but provides a special mode by which it may be dissolved. The fact that there is a money payment does not make the custom immoral and among the inferior castes similar customs are known to prevail."[16]

The same Court held in another case[17] that mere desertion of his wife by a Sudra and their separation for several years is not sufficient to dissolve their marriage though it is true that divorce exists in certain circumstances in Vellas.

Again in a case[18], in Lingayat community of South Canara the re-marriage of a wife deserted by her husband was recognised as valid. Its legal and social name is Sarai Udiki (giving a cloth). This is valid but is different from Lagna or Dhara, the first marriage. In this case a number of witnesses gave evidence

11. *Emperor* v. *Bai Ganga*, (1917) I.L.R. 19 Bom. 56.
12. In re *Karsan Goja and Bai Rupa* (2 cases) Bom. M.C. Rep. 117-II.
13. *Hira* v. *Hansji Pema*, (1912) I.L.R. 37 Bom. 295.
14. 1 Morley Digest, 181.
15. *Kundomee Dasee and others* v. *Joteeram*, 3 Cal. (1878) 305.
16. *Shankarlingam Chetti* v. *Subban Chetti & others*, (1894) I.L.R. 17 Mad. 479.
17. *Pachan Pillai* v. *G. Gopalan Pillai*, 42 Mad. L.J. 276.
18. *Virsangappa* v. *Endrappa and others*, (1885) I.L.R. 8 Mad. 440.

and established Udiki as vaild either by quoting their personal example or their neighbours' cases, and their recognition by caste. Lingayats according to Bombay High Court are Sudras but actually it is only a sect which can be joined by any of the four castes. The Court held the children of *Udiki* to be as legitimate as that of Lagna or Dhara. This sect is spread over Mysore, Wynad, Ceded districts, in Coimbatore, and South Canara. The witnesses were quite important and authoritative as they were Gurus (teachers in religious field) and Mathadhisas (temple heads).

Nagpur High Court also has accepted divorce on the basis of custom as valid. In *Kodu* v. *Lola*[19], a Pat or Churi marriage was recognised as perfectly valid and divorce was upheld following the decision of Bombay High Court in *Mira* v. *Hemsji*. The only care taken and point emphasised by the Court was whether the previous marriage was validly dissolved or not; that not being the case it could not accept the latter marriage as valid. As early as 1852[20], we find a decision adopting the same line of reasoning. The learned Judge observed that it was not legal for a woman to make a Pat marriage without having previously obtained permission of her husband, unless he is dead; the children of such a marriage shall not inherit but shall be maintained in case a Soda Chitti was not taken, *i.e.*, a deed of release was not obtained by the wife from her former husband. It is interesting to note that in a case[21], Nagpur High Court took the view that under Hind Law even if a divorce is permissible by custom, a divorce which is not by mutual agreement but is unilateral and against the wishes of the divorced party is not valid.

These cases show that divorce by custom has long been permitted in certain groups among Hindus. But unfortunately no detalis are available, firstly, because customary divorce prevails only in the lower stratum of society which is very poor; and either for financial reasons or due to their less developed legal sense, they hardly ever take a divorce case to a regular Court of law. The village Panchayat is their Court, and so there are very few reported cases available on the subject. Secondly in all these decisions only a verdict of guilty or not guilty is pronounced and there is no examination of details. Thus we have no clear picture but just an assertion that divorce did exist. We have no knowledge of procedural details *e.g.*, How a divorce was given, or on what grounds? Whether any provision was made for the children of the previous marriage—their custody, maintenance, etc.?

Generally speaking we can deduce the following points from the material that is available:

1. Divorce as a general rule was not permitted in Hindu society.

2. Divorce by custom was allowed among the lower castes generally and even among some higher castes, *e.g.*, among Sompura Brahmins.

3. As a basic principle the former husband's consent was necessary to dissolve the marriage; without such consent the re-marriage of a woman was invalid.

4. Desertion was accepted as a good ground for divorce among certain groups but not in others.

5. The village or the caste Panchayat was not given the authority to dissolve a marriage on its own without the husbands' consent.

6. Divorce was generally recognised in the lower community group. This view was taken solely upon the authority of Steel's Hindu Law.

Manek in his Handbook of Hidu Law (8th ed., p. 40) states that among the lower castes of Hindus a marriage could be dissolved on the following grounds:

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19. *Kodu* v. *Lola*, I.L.R. (1947) Nag. 885.
20. West & Buhler, Vol. I, 92.
21. *Sitaram Ranoo* v. *Demai Jaya*, I.L.R. (1948) Nag. 851.

1. Husband being impotent.
2. Continuous quarrel.
3. By mutual consent.
4. Irregularity in performance of the marriage.
5. Husband's long and continued absence and want of knowledge that he is alive.

Manek, however, does not support his statement by any authoritative references.

LESGISLATIVE PERIOD OR PRESENT-DAY POSITION.

As mentioned earlier some States in India had introduced divorce by legislation even before 1955. In that year divorce was made permissible for all castes of Hindus by a Parliamentary enactment.

Baroda was the first Indian State to introduce divorce in Hindu Law by legislation in 1931. About two decades later it was followed by Bombay. It was not long before Madras legalised divorce for Hindus of all castes in 1949. Saurashtra passed its Hindu Divorce Act in 1952. In 1954 the Union Legislature legalised divorce for all Indian citizens if the marriage was registered under the Special Marriage Act. Thus divorce was indirectly introduced in Hindu marriage. Finally in 1955 our Parliament put an end to the age old concept of Hindu marriage as a lifelong union. Hindu Marriage Act, 1955, allowed the right of divorce to Hindus of all castes, sect and sub-sects. The enactment is to have retrospective effect and applies even to marriages performed before the Act came into force.

Generally speaking all these enactments provide similar grounds for divorce, *viz.*, desertion, cruelty, being unheard of for a long time, suffering from some loathsome or veneral disease, conviction for a criminal offence of a serious nature and impotency. None of these enactments however accepts barrenness of the wife or mere incompatibility of temper as good grounds for divorce.

Our Special Marriage Act however stands apart as a piece of matrimonial legislation. Among other grounds if permits divorce by mutual consent. The provision creates a somewhat anomalous situation. On the one hand collusion of parties is a bar for the grant of a decree for divorce and at the same time mutual consent is considered a good ground for obtaining a divorce.

One may well pause and inquire whether are we drifting ? In our anxiety to emancipate woman from the thraldom of man and provide relief for parties to ill assorted marriages which the parties might find inconvenient, by providing facilities for easy divorce, we have gone even beyond Reno (Nevada U.S.A.) which has earned an 'unenviable' reputation in this connection throughout the States of America.

To recapitulate, there are three stages through which we may trace the divorce law of Hindus. First, during the Vedic period where we do not find even the germ of the idea of divorce. Secondly, the Smriti period, here the idea of divorce is put forward by Narada and Parasara though not without considerable hestiation, and thirdly the modern period which for the present purpose may be taken to have commenced only in the second quarter of the present century. Here with our theories of individual liberty in every sphere of life, equality of sexes and emancipation of women we have discovered in divorce a remedy for the ills of inconvenient and ill assorted marriage. We have effected a complete break with the past Our recent legislation on the subject, is not only in total disregard of Shastric injunctions but is wholly inconsistent with our ancient tradition. It is doubtful if it is compatible with the spirit of true Aryan culture.

To say so is not to disregard the existence of the practice of divorce among what are called the lower castes in Hindu community When we talk of the Vedas and Smritis we refer to what is regarded as the repository of wisdom of an anceint people acquired through ages, something that represents Aryan culture as evolved by the Indian branch of the race at its highest. The so called lower castes though they

comprise a large section of Hindu community do not represent the Indian culture, nor could a practice prevailing among that section be taken to represent the ideal of the Indian nation. Marriage as an indissoluble union where there is no room for any such thing as divorce, was a pattern evolved by the community. Nor was it a mere distant ideal. It had become part of the mental make-up of the nation and was followed in actual life.

Our recent law of divorce is not the result of a process of evolution or natural development in a progressive society, it is an exotic plant engrafted on our legal system by the reformist zeal of our legislative crusaders who are out to create a brave new world by just enacting laws. It is too early to judge the effect of this legislation on our social life. It will however be interesting to watch how far advantage is taken of the recent legislation by the community and how in years to come our social structure is affected by it.

SRI G. R. JAGADISAN

Judge-designate of the Madras High Court.

The announcement of the appointment of Sri G. R. Jagadisan, a senior member of the Madras Bar, as a permanent Judge of the Madras High Court will be welcomed by one and all. Recognition of merit does come, sooner or later—and the talk of Sri Jagadisan being tipped for Judgeship has been current in recent times. It is neither necessary, nor is this the occasion to introduce Sri Jagadisan to the members of the Madras Bar. He has been such an active, close and familiar associate among the members of the Bar till this day that he will probably be still known familiarly by his initials 'G.R.'

Hailing from Tanjore District Sri Jagadisan graduated from the St. Joseph's College at Tiruchirapalli and took his Law Degree from the Madras Law College. He had his Apprenticeship under Sri K. S. Krishnaswami Iyengar, who became a Judge of the Madras High Court. He worked with Sri A. V. Viswanatha Sastri, who also adorned the Bench of the Madras High Court and later served as an Additional Judge of the Andhra High Court. He was closely associated in his work with Sri T. L. Venkatarama Iyer who also became a Judge of the Madras High Court and then a Judge of the Supreme Court of India and who is now steering the work of the Law Commission.

Sri Jagadisan rose to the forefront of the Bar by hard and intensive work for over several years. His is not one of those lucky starts which leads on to sudden fame and fortune. He had to go through the gruelling tests of waiting, studying, and training and has grown to be an able Advocate. His work was steady and good and he has appeared, in recent years, in many important cases in the High Court and the Supreme Court as will be borne out by the Law Reports.

Of a rather reserved temperament, suave in manners, slow and steady in his voice, his advocacy has always been marked by its logic and analysis, more than anything else. With his training and experience in the background of the fine traditions of the Madras Bar of which he was a member all these years, we are sure Sri Jagadisan will be a popular and able Judge.

We offer him our hearty felicitations on his elevation to the Bench.

THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1959

Some New Features

By

P. N. CHANDRASEKHARA IYER, M.A., B.L., *Advocate, Tanjore.*

This enactment having received the assent of the President on the 19th November, 1959, has become law (Madras Act No. XXII of 1959) and the prior enactment Act XIX of 1951 stands repealed. In the Statement of Objects and Reasons for the new enactment it was stated that the new enactment was necessitated by two reasons, *viz.*, revision of certain provisions consequent on the decisions of the High Court and Supreme Court, and removal of difficulties experienced in the working of the Act. The first object may now be deemed to have been accomplished, in as much as the intendment of the decisions appear to have been given effect to. As regards the second object, if the changes introduced in the original Bill in respect of certain provisions are an indication of the difficulties, it is doubtful if the intended object is now achieved, for, many such changes have not only been not accepted in the new Act, but the legislation even indicates a change in the contrary direction in such provisions. In this context, the position of the Area Committee comes to one's mind. But it is not the object of this article to enter into controversial fields, but it is merely to indicate the more important of the new features in the present enactment.

New Bodies.—Three new bodies are proposed to be set up under the Act. One of them is called the *Advisory Committee.* It is to consist of the Minister in charge, the Departmental Secretary to Government, the Commissioner and twelve non-officials, and its functions are to make recommendations to Government in respect of prescribed matters and to advise the Government on matters referred to it (section 7). Another new body mentioned is the "*Consultative Committee* and Sub-Committee." It is constituted by the Government or a subordinate authority specially authorised. Further particulars of this body are not available, and from the provision that the Act must be deemed to have come into force even from 28th November, 1958, in respect of expenses incurred by that Committee, it has to be inferred that the said body has already been constituted from 28th November, 1958 (section 92 (4) and section 1 (4)). The third new body is the *Tribunal* (section 83.) The qualifications for appointment to the Tribunal and the conditions of service have to be prescribed but the number of members shall not exceed three. The function of the Tribunal is to make award in respect of the amount of compensation due to any lessee, licensee or mortgagee of any land or building belonging to a religious institution whose contract is compulsorily terminated and who is dispossessed in consequence. The Government is authorised to constitute as many tribunals as may be necessary for the purposes of the Act.

Encroachments on properties of institutions (Chapter VII).—New powers have been taken in the Act for prevention of encroachments on the properties of religious institutions, and for preserving their artistic appearance and religious atmosphere. Trustees are prohibited from leasing, mortgaging with possession, or granting license of appurtenent properties, *i.e.*, those adjoining the institutions whether inside or outside, such as land, tank, well, prakarams, matams, courtyards, corridors, etc., except it be for purpose of providing amenities to pilgrims, or vending flowers or other articles used for worship, or of holding for specified periods fairs or exhibitions during festivals. If in the opinion of the Assistant Commissioner there has been an encroachment on such appurtenant property, he shall report to the Deputy Commissioner, and if the Deputy Commissioner after due notice and enquiry decides that an encroacment is made, he shall order removal, and the Assistant Commissioner may take possession with police help if necessary. An appeal to the Commissioner is provided for. But the alleged encroacher can file a suit in the Civil Court that the religious institution has no title to the concerned property (Section 79.)

The Deputy Commissioner, on a report from the Assistant Commissioner, if satisfied that any action taken by a lessee, licensee or mortgagee of such appurtenant property has marred or is likely to mar the artistic appearance or religious atmosphere of the religious institution, may after due notice and enquiry terminate the lease or license or cancel the mortgage and may require the lessee, licensee or mortgagee to deliver possession to the trustee. Provision is made for an appeal to the Commissioner against the order of the Deputy Commissioner. Such decision is final and conclusive on the question that the artistic appearance or religious atmosphere is marred, and the Assistant Commissioner shall take possession with police help if necessary, and the trustee shall forthwith restore the artistic appearance or religious atmosphere. The lessee, licensee or mortgagee is entitled to compensation, to be determined by the Tribunal constituted for the purpose, and in any case the amount of compensation shall not exceed the amount payable by the lessee or licensee for the unexpired term of the lease or licence, and in case of mortgage the balance due under the mortgage. The aggrieved party may file a suit in the Civil Court against the award. Officers of the Department and other persons acting in pursuance of these provisions are protected from legal proceedings for such action taken by them and for any damage caused or likely to be caused from such action.

Authorities under the Act.—Special qualifications are prescribed for the various authorities exercising functions under the Act. The post of *Commissioner* shall be held by a member of the State higher judicial service, and the post of *Deputy Commissioner* shall be held by a member of the Madras judicial service and the said posts may also be held by a member of any other service, or may be filled by direct recruitment, but if the Commissioner's post is not held by a member of the judicial service, at least one of the posts of Deputy Commissioner shall be held by a member of the judicial service (section 9). A number of qualifications are enumerated for eligibility for appointment to the Area Committee. He should profess the Hindu religion, his age should be between twenty-five and seventy, he should not be an undischarged insolvent. He should not have been sentenced by a criminal Court for an offence involving moral delinquency. He should not be a trustee, office-bearer, or servant of a religious institution subject to the Area Committee nor should he be interested in a subsisting lease or contract or paid legal practitioner of such institution (section 16). Similar qualifications are prescribed for trustees (section 26).

The *Assistant Commissioner* is now reduced from his position of Chairman to that of Secretary of the Area Committee (section 17), and in making appointments to the Area Committee, the Government will appoint one amongst them as Chairman. The Secretary will have right to take part in the discussions of the Committee but he has no right of vote. But he can send up to the Commissioner his own views in respect of any item of the proceedings of the Area Committee and to suggest such action as he may consider necessary. The Area Committee is now given power not merely to appoint non-hereditary trustees for religious institutions not comprised in the Commissioner's list, but also to suspend, remove, or dismiss such trustees for specified reasons, thus removing an anomaly in the old Act. But now some special powers are given to the Assistant Commissioner. Under the old Act (section 98) in cases of emergency the Assistant Commissioner was empowered to direct the doing of any act, which should ordinarily be done by the Area Committee, provided it was not a matter prohibited by the Area Committee, and the Area Committee could annul, modify or reverse the same at its next meeting. But under the new Act (section 113) the Assistant Commissioner may do or direct the doing of any act not only in cases of emergency, but also, where he is satisfied that the Area Committee has failed or omitted to discharge any of its duties or to perform any of its functions and the only restriction is that the action should not be inconsistent with the provisions of this Act; he has only to report to the Commissioner. These clumsy provisions may be the result of a compromise between the original provisions in the Bill and the views of the Select Committee.

Executive Officer.—The term "Executive Officer" has for the first time been defined in this Act as a person appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution, as are assigned to him under the Act or Rules or Scheme. In this Act, for the first time a provision is made for his appointment directly (section 45). Under the 1951 Act, an Executive officer could be appointed to a religious institution only under the guise or device of framing a scheme for the better administration thereof. But under the new Act, the Commissioner may appoint subject to such conditions as may be prescribed, an executive officer for any religious institution (other than Math) and define his powers and duties; and may for good and sufficient cause suspend or remove or dismiss the Executive Officer. Consequent on this provision, the provision in the Scheme section providing a clause for the appointment of a paid Executive Officer has been deleted.

Hereditary trustees.—Hereditary trustees have acquired one or two additional rights. In cases where additional (non-hereditary) trustees are appointed for religious institutions having a hereditary trustee the hereditary trustee alone shall be the Chairman of the Board of trustees, and if there is more than one hereditary trustee, one of such hereditary trustees alone shall be elected or nominated to be its Chairman. In respect of non-listed temples, while the power to punish non-hereditary trustees is now vested with the Area Committee, in respect of hereditary trustees, such power can be exercised only by the Deputy Commissioner and there is a right of appeal to the Commissioner. In respect of listed institutions the power to punish hereditary trustees is vested with the Commissioner and there is a right of appeal to the Government. The hereditary trustee who is aggrieved by an order of the Commissioner or the Government as above is now given a right to institute a suit in the Court against such order.

Maths.—The rights now preserved to heads of maths (and of specific endowments attached thereto) may now be taken to have come up to the legal requirements, as laid down in the decisions of the High Court and the Supreme Court impugning certain provisions of the earlier Act as *ultra vires*. At the same time, it may be noted that the suggestion of the High Court to enact or classify separately the provisions relating to maths to avoid confusions and conflict has not been followed, so that the special provisions regarding heads of maths are again strewn about in the Act. Maths have been excluded from the wide and general powers of the Commissioner to call for records of proceedings with a view to examine the regularity, correctness or propriety of any decision or order of a trustee, and to pass appropriate orders, but the Commissioner has power to interfere to examine the legality of a decision or order of the head of a math (section 21). In the exercise of the right of officers to enter religious institutions very stringent safeguards are introduced. They should have due regard to the religious practice or usage of institution, and if such a usage prohibits entry into the *sanctum sanctorum* or *pooja griha* or any other portion held specially sacred within the premises of the institution, they are bound to conform to it and if a difference of opinion or dispute arises on this matter, the question has to be referred to the Commissioner for decision, and a further appeal to the Government against the orders of the Commissioner, at the instance of the aggrieved party is also provided. The said officers are bound to observe forms and ceremonies appropriate to the institution, and in their dealings with the head of the math have to act in conformity with the usages of the Math (sections 24, 25). In the matter of incurring expenditure for arrangements to secure the health, safety or convenience of disciples, pilgrims or worshippers, and for the training of archakas, the trustee of a math is not fettered now by any instructions of the Commissioner (section 35) and he may now utilise the surplus income from the endowments after meeting the prescribed expenses, in such manner as he deems fit (section 36) and he is entitled to spend the *Pathakanikkai* at his own discretion in accordance with the custom and usages of the institution (section 62). Maths are exempted from the notification proceedings of Chapter VI. Furthermore there is now no power vested in any authority to appoint a salaried Executive Officer for a math either directly (section 45) or under the guise of a scheme (section 65) and the Commissioner has power to

modify existing schemes in such manner as may be necessary to bring it into conformity with the provisions of this Act.

Trustees.—They have lost ground on some points, notably two. The power of the trustee to utilise surplus funds of the institution continues to be subject to restrictions and conditions and the sanction of the Commissioner has to be obtained therefor. Under the old Act, a right of suit was given to the trustee or any person having interest, to set aside the order of the Commissioner and against the decision of the Court, a further right of appeal to the High Court was also conferred. Under the new Act, the right of suit is taken away and in its stead only an appeal to the Government against the decision of the Commission is provided. Under the old Act, there was only one mode of surcharging trustees for loss caused by neglect or misconduct or illegality or irregularity and that was at the time of the consideration of the audit report. Now under the present Act, an additional and speedier mode for surcharge is provided (section 33). If in the course of inspection by the Commissioner, or subordinate authority, of the records accounts, etc., of a religious institution, it appears that the trustee or any officer or servant working under him has misappropriated, or incurred illegal or improper expenditure, the Commissioner may after due enquiry, certify the amount so lost and initiate surcharge proceedings as laid down in the Act.

Utilisation of Temple funds.—The disbursement and utilisation of temple funds by trustees for the various purposes in their order of importance are now clearly defined. First come the budgeted purposes, *i.e.*, maintenance of the objects of the institution and the performance of the services, discharge of loans, repair, and renovation of temple buildings, contribution to Reserve fund, and maintenance of working balance. Next comes the expenditure which may be incurred on arrangements for securing the health, safety and convenience of pilgrims and the worshippers resorting to the institution, and for the training of *archakas*, *adyapakas*, *vedaparayanikas* and *othuvars*, in accordance with the general or special direction of the Commissioner or Area Committee as the case may be. Thereafter the surplus may be appropriated with the sanction of the Commissioner to all or any of the undermentioned purposes, preference being given to the first seven: *viz.*, aid to poor institutions : aid to Hindu religious purposes ; propagation of the religious tenets of the institution ; recitation of *Divya Prabandams* and *Thevarams* ; schools for training *archakas*, *othuvars*, etc., college or university in which the main feature is study of Hindu religion, philosophy, sastras and Hindu temple architecture ; educational institutions in which instructions in Hindu religion is also imparted ; promotion of fine arts and architecture ; orphanages for Hindu religion ; asylums for lepers, poor homes for destitutes and disabled persons and hospitals for pilgrims. But where the religious institution is founded and maintained by a religious denomination or any section thereof the endowments shall as far as possible be utilised for the benefits of the denomination or section concerned for the above-mentioned purposes.

Funds.—The necessary provisions for legalising the funds of the Administration have now been enacted (section 12, section 92). All the officers of the Department inclusive of the servants and Executive Officers are now deemed servants of the Government, and their salaries and pensions and the charges and expenses incurred by the Area Committees and the costs of audit are to be paid in the first instance out of the Consolidated Funds of the State. The Commissioner shall collect from all religious institutions, contributions, at a rate not exceeding seven per cent. of its income annually. He shall also collect from all temples (except temples with less than an annual income of Rs. 1,000) a further sum not exceeding one and a half per cent. per annum for meeting the cost of auditing. These collections shall be credited to a fund called the Madras Hindu Religious and Charitable Endowments Administration Fund which shall vest in the Commissioner. To this fund may also be credited grants or loans from Government or grants from private persons. Further the Commissioner shall recover from the religious institution, the salaries, allowances and pensions of Executive Officers and credit this amount also to the said fund. Out

of the said fund, the Commissioner shall repay to the Government all the sums paid by the Government from the Consolidated Fund, and also repay the loans due to the Government.

Common-Good Fund.—A new fund called the common good fund (section 97) created under the Act has been made necessary due to an impugned sub-section (section 76 (5)) of the 1951 Act. Their Lordships of the High Court while discussing the constitutional validity for the levy of contributions, in the *Puttigi Mutt case*[1], stressed again the difference between a tax and a fee. Their attention was drawn to the progressive increase made by the legislature in the various amending Acts in the rate of contribution from one and half per cent. to five per cent. of the income and their Lordships held that in order to make the contribution legal, a real correlation is to be maintained at all times between the fee actually levied and the services rendered, and that the rates should be kept as near as possible to the real *quid pro quo* basis for the same, and that therefore when section 76 (5) of the 1951 Act provided for a surplus fund out of the contribution levied, the levy became illegal to that extent and therefore their Lordships struck down that sub-section. It has to be assumed that when the maximum rate for the contribution has in the present Act been further increased to 7 per cent. the legislature must have kept these *quid pro quo* principles in view. Whatever that may be, this new fund, the common good fund has been created for the purposes for which the fund under the impugned sub-section (5) of section 76 of the 1951 Act was sought to be utilised. This fund also vests in the Commissioner and is to be administered by him. It is to be created out of voluntary contributions made by private persons, or by trustees of reigious institutions out of their surplus. But voluntary contribution to this fund is not one of the objects for which the surplus could be utilised by the trustees of temples under the Act. The provision can apply, if at all, only to trustees of maths who are now given the right to utilise the surplus in such manner as they deem fit. This common good fund has been created for the renovation and preservation of needy temples and their paintings and for the promotion and propagation of tenets common to all or any class of religious institutions.

There are many other minor amendments, too minute and too numerous, to be mentioned here. Further the Rules to be framed under the Act are yet to come and it is well known that in modern Indian legislation, Rules play as important a part (if not a more important one) than the enactment itself. That the Government has been taking more and more powers in this field whenever one enactment replaces another has often been commented upon. One instance of this feature, in the present enactment is the power taken by Government (section 4) to exempt any religious institution from the operation of any of the provisions of this Act or the Rules and to vary or cancel such exemption.

[END OF VOLUME (1959) 2 M.L.J. JOURNAL.]

1. (1956) 1 M.L.J. 532.

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[SUPREME COURT.]

S. K. Das, A. K. Sarkar and K. Subba Rao, JJ. Ujagar Singh *v.* Mst. Jeo.
23rd April, 1959. C.A. No. 296 of 1956.

Custom—Punjab—Whether sisters are excluded by collaterals in the matter of inheritance to non-ancestral property.

" It seems to us wrong to say that a general custom need never be proved. It therefore appears to us that the ordinary rule is that all customs, general or otherwise, have to be proved. Under section 57 of the Evidence Act, however, nothing need be proved of which Courts can take judicial notice.

The High Court was right in the view that it could not be held on the authority of paragraph 24 in Rattigan's Digest that a general custom excluding sisters from inheritance as against collaterals, existed".

L.R. 45 I.A. 10 : 34 M.L.J. 48, referred to.

Achhru Ram, for Appellant.

Gurbachan Singh, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and K. Subba Rao, JJ. Bhinka *v.* Charan Singh.
C.A. Nos. 78-83 of 1959.
24th April, 1959.

Criminal Procedure Code (V of 1898), section 145 and the jurisdiction of Civil Courts.

Under section 145 (6) of the Criminal Procedure Code, a Magistrate is authorised to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is an apprehension of the breach of the peace and to prevent it, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal C urt.

L.R. 29 I.A. 24 : 12 M.L.J. 83, referred to.

B. C. Misra, for Appellant.

S. N. Andley, for Respondent.

G.R.

[SUPREME COURT.]

B. P. Sinha, J. L. Kapur and M. Hidayatullah, JJ. Saroj Kumar Mazumdar *v.* C.I.T.
C.A. No. 347 of 1955.
4th May, 1959.

Income-tax Act (XI of 1922)—Isolated transaction—When adventure in the nature of trade.

The question for determination in this appeal is whether the solitary transaction in respect of about three-quarters of an acre of land in the suburbs of Calcutta was an adventure in the nature of trade and therefore liable to income-tax.

The line of demarcation between cases of isolated transactions of purchase and sale between ventures in the nature of trade and those which are not such ventures, if any, is very thin.

In all the circumstances of this case, the total impression created on our mind, is that it has not been made out by the Department that the dominant intention of the appellant was to embark on a venture in the nature of trade, when he entered into the agreement which resulted in the profits sought to be taxed.

A. V. Viswanatha Shastri, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
5th May, 1959.

Indian Hume Pipe Co., Ltd. *v.* Workmen.
C.A. No. 54 of 1956.

Industrial Disputes Act (XIV of 1947)*—Determination of bonus—Full Bench Formula —Debenture—Redemption Fund—Cannot be deducted as prior charge.*

" It is also well settled that the calculations of the surplus available for distribution should be made having regard to the working of the industrial concern in the relevant accounting year without taking into consideration the credits or debits which are referable to the working of the previous years, *e.g.*, the refund of excess profits tax paid in the past or loss of previous years carried forward but written off in the accounting year also any provision that may have to be made to future liabilities, *e.g.*, redemption of debentures stock or provision for provident fund, gratuity and other benefits, etc., which, necessary though they may be, cannot be included in the category of prior charges."

M. C. Setalvad, Attorney-General of India, for Appellant.

N. V. Pharke, for Respondent.

G.R.

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
5th May, 1959.

Tata Oil Mills Co., Ltd. *v.* Workmen.
C.A. No. 321 of 1958.

Industrial Disputes Act (XIV of 1947)*—Determination of bonus—Full Bench Formula —Extraneous income—Deduction of.*

We cannot see how income arising during the year in the normal course of business of the concern can be called extraneous income merely on the ground that no direct connection between the efforts of labour and the accrual of the income has been established. Then we come to the profit of Rs. 3 lakhs made by a change in the method of accounting. The tribunal did not accept this income as extraneous and in so doing it fell into error. This income of Rs. 3 lakhs has nothing whatsoever to do with the efforts of labour, even though it has arisen this year. It has arisen out of a fortuitous circumstance inasmuch as this year there was a change in the basis of valuation of stock. It is not income in the normal course of business because it is not likely to arise over again. In the circumstances this income of Rs. 3 lakhs must be treated as extraneous income and excluded for the purpose of calculations based on the Full Bench Formula.

C. K. Daphtary, Solicitor-General of India, for Appellants.

Rajni Patel, for Respondent.

G.R.

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
5th May, 1959.

Crompton Parkinson Works Private Ltd. *v.* Its Workmen.
C.As. Nos. 755 and 757 of 1957.

Industrial Disputes Act (XIV of 1947)*—Bonus—Determination—Full Bench Formula —Deduction for commercial necessity—Error of Law.*

" The conclusion of the Tribunal of that point is founded that the test of "commercial necessity" applied by the Income-tax authorities for determining whether

the expenditure was allowable under section 10 (2) (*xv*) of the Indian Income-tax Act should be applied by the Tribunal. The Tribunal evidently overlooked the fact that the Income-tax authorities are entitled to apply the tests of commercial necessity by reason of the express provisions of section 10 (2) (*xv*) which authorise them to tax at the taxable income, profits and gain after making allowance for expenditure laid out and expended wholly and exclusively for the purpose of the business. There is no such provision in the Industrial Disputes Act. In the absence of cogent and compelling evidence leading to the definite conclusion and finding that a purported expenditure was shown or had been made with the express object of minimising the profits with a view to deprive the workmen of their bonus, it is no part of the duty of an Industrial Tribunal to substitute its own judgment as to what was or was not commercially justified in the place of the judgment exercised by the Company and its directors to whom in law the management of the Company is confided."

" A conclusion drawn by the Tribunal without adverting to the evidence before it amounts to an error of law and cannot possibly be sustained."

C. K. Daphtary, Solicitor-General of India, for Appellant.

Rajni Patel, for Respondent.

G.R.

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ.
5th May, 1959.

Trustees of the Charity Fund, Bombay *v.* C.I.T.
C.A. No. 396 of 1957.

Income-tax Act (XI of 1922), *section* 4 (3) (1)—*Religious or charitable purposes.*

The provision for giving preference to the poor and indigent relations or the members of the family of Sir Sassoon David, *Bart.*, cannot affect the public charitable trust constituted under sub-clause (1). In our opinion the income from the trust properties come within the scope of section 4(3) (1) and is, therefore entitled to exemption.

R. J. Kolah, for Appellant.

K. N. Rajagopala Shastri, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, J. L. Kapur and M. Hidayatullah, JJ.
5th May, 1959.

Indian Molasses Co. (P.) Ltd. *v.* C.I.T.
C.A. No. 395 of 1957.

Income-tax Act (XI of 1922), *section* 10 (2) (*xv*)—*Scope.*

To be an allowance within clause (xv) of section 10 (2) of the Income-tax Act the money paid out or away must be (*a*) paid out wholly and exclusively for the purpose of the business and further (*b*) must not be (i) capital expenditure, (ii) personal expense or (iii) an allowance of the character described in clauses (i) to (xiv). But whatever the character of the expenditure, it must be a paying out or away, and we are not concerned with the other qualifying aspects of such expenditure stated in the clause either affirmatively or negatively.

S. S. Aiyangar, for Appellant.

M. C. Setalvad, Attorney-General of India, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
6th May, 1959.

Ispahani, Ltd., Calcutta *v.* Workmen.
C.A. Nos. 473 and 474 of 1957.

Industrial Disputes Act (XIV of 1947)—*Puja bonus—Implied agreement.*

Puja is a special festival in Bengal and it has become usual with many firms there to give bonus before puja to their workmen. It may be taken as well settled that puja bonus in Bengal stands on a different footing from the profit bonus based on the Full Bench Formula. Where the agreement was not express, circumstances might lead the tribunal to an inference of implied agreement. We are of opinion

that the tests laid down in that case for inferring that there was an implied agreement for grant of such a bonus are correct and it is necessary that they should all be satisfied before bonus of this type can be granted.

M. C. Setalvad, Solicitor-General of India, for Appellants in C.A. No. 473 and Respondent in C.A. No. 474.

P. K. Ghosh, for the Respondent in C.A. No. 473 and Appellant in C.A. No. 474.

G.R.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
7th May, 1959.

Graham Trading, Co., *v.* Workmen.
C.A. No. 161 of 1958.

Industrial Disputes Act (XIV of 1947)—Puja bonus—Implied agreement.

Puja bonus which is usually paid in Bengal is of two kinds; namely, (1) where it is paid as an implied term of employment and (2) where it is paid as a customary and traditional payment. An implied term of employment cannot be inferred in this case, for right from 1948 to 1952 the Company whenever it paid this bonus made it clear that it was an *ex gratia* payment and would not constitute any precedent for future years.

B. Sen, for Appellant.

D. N. Mukerji, for Respondent.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
7th May, 1959.

Raj Engineering Works *v.* Workmen.
C.A. No. 323 of 1958.

Industrial Disputes Act (XIV of 1947)—Balance sheets as the basis of workmen's claims for bonus—Festival holidays.

Ordinarily the figure of gross profits disclosed by the balance-sheet should be taken as the basis for the working of the Full Bench Formula, for determining bonus unless of course any entries in the balance-sheet are of such a glaringly suspicious character that the tribunal feels justified in examining them.

The contention of the appellant that the " question about the number of such holidays is a question of fact and since the tribunal had decided the question it was not open to the Labour Appellate Tribunal to interfere with the said decision" was rejected because the Court held that " It is significant that for the mistake which is thus apparent on the face of the award passed by the tribunal the appellant itself is to blame. The pleadings of the parties before the tribunal explain how the tribunal committed the mistake."

Veda Vyasa, Senior Advocate (*S. K. Kapur* and *Ganpat Rai*, Advocates with him), for Appellants.

Y. Kumar, Advocate, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ.
8th May, 1959.

C.I.T. *v.* Ranchoddas Karsondas.
C.A. No. 281 of 1955.

Income-tax Act (XI of 1922), sections 22 (1) and (2) and 34—Scope.

While the Bombay High Court seems to be of the view that a " voluntary " return showing a non-taxable income is still a good return for all purposes under the Act, the Calcutta High Court is of the view that what section 22 (1) of the Act requires is a return of taxable income and not a return of income, which, shows a loss or is below the taxable limit. It is a little difficult to understand how the existence of a return can be ignored, once it has been filed. Notice under section 34 is only necessary if at the end of the assessment year no return has been made by the assessee, but where the assessee himself chooses voluntarily to make a

return, no question can arise under section 34 of assessment escaping, and therefore there is no necessity to serve any notice under section 34. Bombay view approved.

K. N. Rajagopala Shastri, for Appellant.
R. J. Kolah, for Respondent.
G.R.

[SUPREME COURT.]

S. R. Das, C.J., S. J. Imam, S. K. Das, K. N. Wanchoo and M. Hidayatullah, JJ.
12th May, 1959.

State Bank of India *v.* Employees.
C.As. Nos. 56-62 of 1957.

Banking Companies Act (X of 1949), *section* 10—*Sastri's Award—Bonus to employees —Amendment in* 1956.

" There are, in our view, clear indications in the section itself that the word 'remuneration' has been used in the widest sense, and undoubtedly includes 'bonus'. It is labour's share in the profits, and as it is a remuneration which takes the form of a share in profits, it comes within the mischief of section 10 of the Banking Companies Act."

The Sastri's Tribunal appointed by the Government was competent to go into the question of bonus and section 10 of the Banking Companies Act prior to its Amendment in 1956 prohibited the grant of industrial bonus to bank employees.

N. A Palkhiwala and *M. C. Setalvad,* Attorney-General or India, for Appellants.
N. V. Pharke and *B. P. Maheswari,* for Respondents.
N. C. Chatterjee, for Bank Employees.
G.R.

Appeals allowed.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
13th May, 1959.

Imperial Hotel *v.* Chief Commissioner, Delhi.
C.A. No. 291 of 1956.

Industrial Disputes Act (XIV of 1947)—*Union of Hotel-workers—Right to be a party before the Tribunal.*

"I am of the opinion that it was entirely unnecessary to mention in the order of reference who were the workmen who were responsible for the dispute ". The dispute was between the management and the employees. The Union had been added "merely for the sake of convenience" of the Tribunal in deciding the issue.

J. G. Sethi, for Appellant.
R. H. Dhebar, for Respondent No. 1.
G. S. Pathak, for Respondent No. 3.
G.R.

Appeal dismissed.

[SUPREME COURT.]

S. J. Imam and J. L. Kapur, JJ.
14th May, 1959.

Abdul Rahim Ismail Rahimtoola *v.* State of Bombay.
Crl.A. No. 182 of 1957.

Passport Act (XXXIV of 1930), *section* 3 *and rules—Applicability.*

On a reasonable interpretation of section 3 of the Act and rules 3 and 4 of the rules there can be no manner of doubt that these provisions apply to all persons including Indian citizens.

O. N. Srivastava, for Appellant.
G. C. Mathur, for Respondent.
G.R.

Appeal dismissed.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
15th May, 1959.

Guest, Keen Williams, Ltd *v.* F. J. Sterling.
C.A. No. 403 of 1957.

Industrial Disputes Act (XIV of 1947)—*Age of superannuation—Relevant factors.*

" In fixing the age of superannuation industrial Tribunals have to take into account several relevant factors. What is the nature of the work assigned to the

employees in the nature of their employment? What is the nature of the wage structure paid to them? What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees? These and other relevant facts have to be weighed by the Tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute."

M. C. Setalvad, Attorney-General of India, for Appellants.

C. K. Daphtary, Solicitor-General, of India, for Respondent.

G.R. ———

[Supreme Court.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ. *15th May*, 1959.

C. I.T. *v.* Kalu Babu Lalchand. C.A. No. 431 of 1957.

Income-tax Act (XI of 1922)—Joint family—Income and individual income of a member—Test.

The finding in this case is that the promotion of the Company and the taking over of the concern and the financing of it were all done with the help of the joint family funds and the said B. K. Rohatgi did not contribute anything out of his personal funds if any. In the circumstances we are clearly of opinion that the managing director's remuneration received by B. K. Rohatgi was as between him and the Hindu undivided family, the income of the latter and should be assessed in his hands.

C. K. Daphtary, Solicitor-General of India., for Appellant.

N. C. Chatterjee, for Respondent.

G.R. ——— *Appeal allowed.*

[Supreme Court.]

B. P. Sinha, S. J. Imam, J. L. Kapur, P. B. Gajendragadkar and K. N. Wanchoo, JJ. *19th May*, 1959.

Dharangadhra Chemical Works *v.* Dharangadhra Municipality. C.A. No. 173 of 1959. (Petition No. 174 of 1958.)

Nuisance—Necessity for expeditious disposal of the case.

The special officer appointed by the Bombay Government to inquire into the matter had wrongly decided that it was for the Municipality to be satisfied about the existence of nuisance and that he could not go into the question. As the matter had been pending since June, 1956, the inquiry should be completed without undue delay. Proceedings of this kind ought to be handled with utmost expedition.

Purshotamdas Trikumdas, for Appellants.

N. C. Chatterjee, for Respondent.

G.R. ——— *Appeal allowed.*

[Supreme Court.]

B. P. Sinha, S.J. Imam, J. L. Kapur, P. B. Gajendragadkar and K. N. Wanchoo, JJ. *20th May*, 1959.

V. V. Giri *v.* Suri Dora. C.A. No. 539 of 1958.

Representation of People Act (XLIII of 1951), section 54—Scheduled tribes and the general seat.

(By *Majority*)—From the various provisions of the Representation of the People Act and the Constitution it was clear that an election to the Lok Sabha from a double-member constituency where one seat was reserved for the Scheduled Tribes was " one ". Though the Constitution showed just anxiety to afford necessary protection to the Scheduled Tribes it deliberately refused to adopt the system of separate electorates. A member of the Scheduled Castes and Tribes was entitled to contest a Reserved seat. But it did not follow that because he claimed the benefit of the Reserved seat and conformed to the statutory requirement in

that behalf he was precluded from contesting the election, if necessary, for the general seat.

Once it was realized that the election was from the constituency as a whole and not by reference to two separate and distinct seats, there would be no difficulty in accepting the view taken by the returning officer in declaring Mr. Dora elected to the general seat. There was no substance in the contention that section 54 was *ultra vires* the Constitution and guaranteed reservation of a minimum number of seats to the Scheduled Castes and Tribes. If they secured additional seats by election to general unreserved seats there would be no repugnancy at all.

N. C. Chatterjee, for Appellant.

Rama Reddy and *Mahalingair*, for Respondent No. 1.

S. S. Shukla, for Respondent No. 2.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam, J. L. Kapur, P. B. Gajendragadkar and K. N. Wanchoo, JJ
20th May, 1959.

Ram Prasad Das *v.* State of West Bengal.
Cr. A. No. 59 of 1959 and Petition No. 51 of 1959.

Preventive Detention Act (IV of 1950)—*Vague grounds or irrelevant grounds.*

This Court, and naturally, the High Courts, have treated the recitals in the orders of detention, with particular reference to the several clauses and sub-clauses of section 3 (1) (*a*) and (*b*) of the Act, as stating the object to be achieved in making the order of detention. The order of detention may also contain recitals of fact upon which it is based. If the order of detention also contains the recitals of facts upon which it is founded, no further question arises, but if it does not contain the recitals of facts which form the basis of the conclusions of fact, justifying the order of detention, then, as soon as may be (now, under section 7 within a maximum period of five days from the date of detention), the person detained has to be informed of those facts which are the basic facts or the reasons on which the order of detention has been made. Section 3 of the Act requires the authority making an order of detention, to state the fact of its satisfaction that it is necessary to make the order of detention of a particular person, with a view to preventing him from acting in a manner prejudicial to one or more of the objects contained in clauses and sub-clauses of section 3 (1) (*a*) and (*b*) of the Act. Section 7 requires that the person detained should be communicated the grounds on which the order of detention has been made, so as to afford him the earliest opportunity to make a representation against the order, to the appropriate Government. The statement of acts contemplated by section 7, would, thus, constitute the grounds, and not the matters contained in one or more of the clauses and sub-clauses under section 3 (1) (*a*) and (*b*) of the Act. Section 3 also requires that when an order of detention has been made, the State Government concerned has to be appraised of the order of detention as also of the grounds on which the order of detention has been made together with such other particulars as have a bearing on the order and the grounds.

Veda Vyasa, Senior Advocate (*S. K. Kapur* and *Ganpat Rai* with him), for Appellant.

B. Sen, Senior Advocate (*P. K. Bose*, Advocate with him), for Respondent.

G.R. *Appeal and Petition dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st May, 1959.

C.S.D. Swamy *v.* The State.
Cr.A. No. 177 of 1957.

Prevention of Corruption Act (II of 1947)—*Presumption as to known sources of income of the accused—Burden of proof.*

Under the Prevention of Corruption Act the Legislature has deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that this explanation was worthy of acceptance.

(In the present case it could not be said that the accused was not in possession of pecuniary resources disproportionate to his known sources of income.)

G. S. Pathak, for Appellant.

C. K. Daphtary, Solictor-General of India, for Respondent.

G.R. — *Appeal dismissed*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st May, 1959.

Imperial Hotel, Maidens Hotel and Swiss Hotel *v.* Their Workmen.
C.A. Nos. 31-33 of 1958.

Industrial Disputes Act (XIV of 1947) *section* 33—*Ordinary law of master and servant—Right to suspend.*

" We are of opinion that the ordinary law of master and servant as to suspension should be held to have been modified in view of the fundamental change introduced by section 33 in the law and a term should be implied by industrial tribunals in the contract of employment that if the master has held a proper inquiry and come to the conclusion that the servant should be dismissed he has the power to order his suspension and there is no obligation on him to pay."

M. C. Setalvad, Attorney-General of India, for Appellant.

G. S. Pathak, for Respondents.

G.R. — *Appeals partly allowed.*

[SUPREME COURT.]

S. J. Imam, A. K. Sarkar and K. Subba Rao, JJ.
21st May, 1959.

Union of India *v.* Kishorilal Gupta.
C.A. No. 250 of 1955.

Arbitration clause in a contract—Whether a collateral term—If operative after contract has come to an end by performance.

(By *Majority*)—As the contract subsists for certain purposes the arbitration clause operates in respect of these purposes. In these cases it is the performance of the contract that has come to an end, but the contract is still in existence for certain purposes in respect of disputes arising under it or in connection with it. An arbitration clause is a collateral term of a contract as distinguished from its substantive terms ; but nonetheless it is an integral part of it.

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

C. B. Aggarwala, for Respondent.

G.R. — *Appeal dismissed.*

Rajamannar, C.J. and Ganapathia Pillai, J. Thyagarajan *v.* Official Liquidator.
20th March, 1959. O.S.A. No. 82 of 1958.

Companies Act (I of 1956), *sections* 125 *and* 127—*Scope and effect of—Unregistered charge created and acquired by a company—Validity—Difference between.*

Section 125 of the Companies Act renders unregistered charges created by a company void against the Liquidator and the creditors of the company, though such an unregistered charge is not void for all purposes and would be binding on the company itself so long as it is a going concern. Section 127 of the Act deals with cases where a company acquires property subject to an unregistered charge and there is no provision in it rendering the charge not binding on the Liquidators or the creditors of the purchasing company. The word 'created' in section 125 (1) of the Act cannot in the context be given an extended meaning to include 'accepted' which is dealt with under section 127 of the Act.

T. R. Arunachalam, for Appellant.

The Official Liquidator, Madras, *V. V. Raghavan, K. R. Vepa* and *C. Vasudevan,* for Respondents 1 to 4.

R.M. ——— *Appeal dismissed.*

Ramachandra Ayyar, J. Syed Moosa Kazimi *v.* Sheriff.
23rd March, 1959. W.P. No. 30 of 1957.

Payment of Wages Act (IV of 1936), *section* 2 (1)—*'Factory'—Meaning of.*

Factories Act (LXIII of 1948), *section* 2 (*m*)—*'Factory'—If incorporated in Payment of Wages Act.*

Interpretation of Statutes—One Statute incorporating the provisions of another earlier one—Earlier enactment repealed and re-enacted—Effect of on the incorporating Statute.

The use of an electric motor in a bakery for purposes of lifting water would constitute a 'manufacturing process' so as to bring the place within the definition of the term 'factory' as defined in the Factories Act, 1948 and also under section 2 (1) of the Payment of Wages Act, 1936.

When the provisions of one Statute are by reference incorporated in another and the earlier Statute is afterwards repealed and re-enacted, in the absence of a contrary intention in any of the Statutes, the re-enacted provisions would be deemed to have been incorporated in the incorporating enactment. Section 2 (1) of the Payment of Wages Act, which incorporates the definition of 'factory' as defind in the Factories Act, 1934, would be deemed to incorporate the definition as defined in the Factories Act, 1948. The amendment of section 2 (1) of the Payment of Wages Act in 1957 is only by way of abundant caution and even before the amendment the definition of factory as in the Factories Act, 1948, would apply to section 2 (1) of the Payment of Wages Act.

T. Venkatadri and *S. Jayakumar,* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) and *B. Lakshminarayana Reddi,* for Respondents.

R.M. ——— *Petition dismissed.*

Ramaswami, J. Amirthalingam *v.*
24th March, 1959. Dr. Lakshmanaswami Mudaliar.
C.R.P. No. 423 of 1959.

Specific Relief Act (I of 1877), *section* 9—*Orders under—When could be challenged in revision.*

It is now well-settled that an order made under section 9 of the Specific Relief Act is not appealable. Nor could a review or revision lie against such an order as the aggrieved party has a right to institute a suit on the basis of a title. Though there

is no specific bar in the section itself prohibiting a revision to the High Court, still the revisional jurisdiction of the High Court would generally be declined in such cases. In exceptional cases where the rights of the aggrieved party are so clear that it may not be desirable to force him to institute another suit or in cases of manifest error or defect of jurisdiction the High Court may interfere in revision.

T. S. Swaminatha Ayyar for Petitioner.

Respondent not represented.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J.
27th March, 1959.

Natesa Gramani *v.*
Collector of Chingleput.
W.P. No. 456 of 1958.

Madras Cinemas Regulation Act (IX of 1955), *section* 7 *and Rules under—Rules* 80 (2) *and* 91 (1)—*Suspension of licence for breach of conditions enacted in rules—Validity—Clause* 16 *of the conditions of licence—Scope of.*

A licence under the Madras Cinemas Regulation Act, 1955, is issued subject generally to the provisions of the Act and the rules made thereunder and also subject to the other conditions that are printed on the licence itself. It should therefore be deemed that the Act and the rules were incorporated amongst the conditions of the licence. Hence, clause 16 of the conditions of the licence granted under the Act would enable the authority to cancel a licence for the breach of not merely the conditions actually embodied in the licence but also of the rules framed under the Act, which are made part of the licence.

I.L.R. (1956) Mad. 728, referred.

T. K. Subramania Pillai, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Petition dismissed.*

Somasundaram and Ramaswami, JJ.
2nd April, 1959.

Dorayan *v.*
Muthuswami Goundan.
C.A. Nos. 571 and 572 of 1958.

Penal Code (XLV of 1860), *sections* 302 *and* 326—*Death resulting from the act of the accused—When will amount to hurt, culpable homicide or murder—Relevancy of motive—Principles.*

In case where death results from the act of an accused and there is no evidence as to intention, other than what is to be inferred from the act of the accused himself, the offence committed by the accused may be one of three, *viz.*, hurt, culpable homicide not amounting to murder or murder. Whether in a particular case the offence will fall under one or the other will depend on the circumstances of each case. The guiding factor in all such cases is the intention or knowledge with which the act is committed and the nature of such knowledge or intention will determine the character of the offence.

(Factors for guidance of Courts indicated—Relevancy of motive, discrepancies in evidence and value of first information report discussed).

V. L. Ethiraj and *M. Narayanamurthi,* for Appellants in C.A. No. 571 of 1958.

A. S. Sivakaminathan and *M. Narayanamurthi,* for the 1st and 2nd Respondents in C.A. No. 572 of 1958.

V. V. Radhakrishnan, for the Public Prosecutor (*P. S. Kailasam*) on behalf of the State.

R.M. ——— *Sentence modified.*

Somasundaram and Ramaswami, JJ.
7th April, 1959.

Public Prosecutor *v.* Gundow.
Crl. Appeal No. 420 of 1958.

Criminal Law—Self-defence as a ground of excuse—If available to third parties—Extent of.

As a general rule in Criminal Law the right of one to go to the defence of another is co-extensive with the right of the other to defend himself. A person who goes to

the aid of another acts at his own peril and his right to defend the other cannot be greater than the other's right to defend himself at that time. In other words a person accused of homicide while he went to the defence of another, cannot avail himself of the right of self-defence unless both he and the one defended were free from fault in bringing on the difficulty. Every circumstance that would be relevant to a plea of self-defence by the person to whose aid the accused went will be also relevant to show justification on the part of the accused to the same extent as if the homicide had been committed by the accused in his own defence.

[English and American Case-law and Tests referred].

V. V. Radhakrishnan, for Appellant.

K. V. Sankaran, for Respondent.

V. L. Ethiraj, Amicus Curiae.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
7th April, 1959.

The Hindu *v.* Working Journalists of the Hindu.
W.P. Nos. 427 & 428 of 1958.

Industrial Disputes Act (*XIV of* 1947), *section* 11—*Jurisdiction of Court or Tribunal under—Labour Court or Industrial Tribunal—If has jurisdiction to proceed with an adjudication referred to it even after the dispute loses its character as an industrial dispute—Subsequent facts—Whether relevant.*

It is now well-settled that an individual dispute will not in itself be an industrial dispute within the meaning of the Industrial Disputes Act, unless it is supported by a majority of the workers. Though a dispute may be an industrial dispute on the date it was referred to the Labour Court for adjudication, it may lose its character as such at a later date. Where an individual dispute supported by a majority of the workers, was referred to the Labour Court for adjudication under section 10 of the Industrial Disputes Act, when the majority of the workers withdraw their support, the dispute would lose its character as an industrial dispute.

The jurisdiction conferred on a Labour Court or Tribunal is not a general jurisdiction like that of an ordinary civil Court but is a limited one given by the Statute that created it. An Industrial Tribunal or Labour Court would normally lose its jurisdiction under section 11 to proceed further in any matter referred to it when once the dispute goes out of the category of industrial disputes. Further, a Labour Court, like any other Court, must take notice of facts which have happened after the institution of the proceedings and a Court or Tribunal cannot pass futile or unrealistic orders. Courts have to mould their remedies to the actual facts before them and they cannot refuse to take notice of facts which have happened during the pendency of the proceedings before them. This rule will equally apply whether the subsequent facts relate to jurisdiction of the Tribunal or to other rights.

R. Ramamurthi Ayyar and *K. Sundararajan*, for Petitioner.

S. Mohankumaramangalam and *K. V. Sankaran*, for Respondents.

R.M. ——— *Rule absolute.*

Somasundaram, J.
8th April, 1959.

P. T. B. Menon *v.* Govindakrishnan.
Crl. Rev. C. No. 341 of 1959.
Crl. Rev. P. No. 327 of 1959.

Criminal Procedure Code (*V of* 1898), *section* 488—*Petition for maintenance—Jurisdiction of Court —Place where the respondent last resided—What amounts to.*

In order that a Magistrate could entertain an application for maintenance under section 488, Criminal Procedure Code it must be established that the respondent last resided within his jurisdiction. The word reside means to settle or to take up one's abode permanently or for a considerable time and it cannot include casual visits to a place.

A person employed at Delhi and residing there cannot be deemed to have last resided at Madras merely because he happened to stay at Madras for a period of about 10 days while on leave.

(1942) 2 M.L.J. 134 : (1952) 2 M.L.J. 573, referred.

A. C. Muthanna, for Petitioner.

S. Chellaswami and *M. Thirugnanasundaram,* for Respondents.

V. V. Radhakrishnan, for The Public Prosecutor (*P. S. Kailasam*) for State.

R.M. — *Petition allowed.*

Rajamannar. C.J. and Ganapathia Pillai., J.
16th April, 1959.

Narayanaswami Iyer *v.* Union of India by General Manager, Southern Railway.
S.A. No. 1008 of 1955.

Railways Act (IX of 1890), *sections* 77 *and* 80—*Scope and effect of—Notice of claim for loss or damage to goods—Goods consigned carried over several railways—Whether separate notices should be issued to each of the railway administrations—Sectiont* 80—*If should be read with section* 77.

Civil Procedure Code (V of 1908), *section* 80—*Notice under—Railway carriers—Need for two notices, one under Railways Act and another under Civil Procedure Code.*

Statutory notices to Government found in various enactments are only matters of procedure and are not matters of substantive rights. Section 77 of the Railways Act containing the rule as to notice of claim for loss or damage to goods consigned is one such provision. The liability of the Government as owning the several railway administration is not a liability created by the Railways Act but arises only in contract, subject to such limiting factors that are contained in the Railways Act. In its activity in running the railways the Government has not created any separate legal entities, capable of being sued against apart from the Central Government. Section 80 of the Railways Act does not have the effect of creating any such entities and the rule as to notice in section 77 of the Act has no relevance to the scheme of liability enacted in section 80 of the Act.

In cases of through traffic where the goods consigned is carried over several railways, one notice to the General Manager of any one of the railways concerned in the route over which the through traffic passed would be sufficient compliance with section 77 of the Railways Act. The section also does not lay down that such notice should be given to any particular railway administration such as the contracting railway or destination railway, etc.

(1955) 1 M.L.J. 79, differed and overruled.

(1952) 2 M.L.J. 24, referred and explained.

A.I.R. 1949 Pat. 329 and A.I.R. 1953 Assam 193 (F.B.), referred.

Section 77 of the Railways Act does not require that notice of claim for loss or damages should be given to every one of the General Managers of the different railways over which a through traffic occurs. The section contemplates only one notice and such a notice could be given to the General Manager of any one railway.

The question of notice under section 80, Civil Procedure Code, has no bearing on the liability of the Central Government in relation to the railways run by it and it could not govern the scope and application of section 77 of the Railways Act. The amendment of section 80, Civil Procedure Code, in 1948 inserting a special provision as to notice in case of railways could not have any effect on the question of liability of the Government, who now owns the several railway administrations after amalgamation.

Per curiam—It is desirable that the Central Government should undertake legislation dispensing with notice under section 80, Civil Procedure Code, in a case where notice under section 77 of the Railways Act has been given and also clarify as to which railway administration such a notice should be given in cases where through traffic passes over more than one railway administration of the Government.

R. Gopalaswami Ayyangar, for Appellants.

S. S. Ramachandra Ayyar, for Respondent.

R.M. — *Appeal allowed.*

Subramanyam, J. Adappa Chettiar *v.* Meenakshi.
19th March, 1959. S.A. No. 384 of 1957.

Limitation Act (*IX of* 1908), *Schedule I, Articles* 59 *and* 60—*Loan or deposit—How determined.*

While the presence or absence in a document of a promise to repay on demand a certain sum of money with interest at a specified rate would be material in considering whether the money was received as a deposit or a loan, that circumstance would not be conclusive on that question. The fact that the words 'payable on demand' are used in the instrument does not exclude the inference that the money was deposited.

The language of the document has to be considered in each case. The fact that the document is described as a letter is not by itself conclusive whether the transaction is one of loan or deposit.

A. Sundaram Ayyar, for Appellant.

R. Gopalaswami Ayyangar, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Ayyar, J. Siddiah Chettiar *v.*
26th March, 1959. Kanniah Chettiar.
C.R.P. No. 855 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 *and rule* 8 *of the Rules—Power of Revenue Court to implead parties—Scope and extent of.*

It is no doubt true that clause (*e*) of rule 8 of the Rules framed under the Madras Cultivating Tenants Protection Act relating to impleading parties is expressed in wide terms. But the rule should be read in conjunction with section 3 of the Act. The jurisdiction conferred upon the Revenue Court under the Act is circumscribed by the provisions of the Act. Under section 3 the Revenue Court is given power to decide cases of eviction filed by the landlord against the tenant. Rule 8 of the Rules has to be read consistent with this power. The addition of any party permitted under rule 8 is only to enable the Court to completely adjudicate all questions between the parties to the dispute in the matter of eviction. The rule does not enable the Court to implead any party for purposes of deciding disputes regarding title, etc.

D. R. Krishna Rao and *C. Kesava Rao,* for Petitioner.

D. Ramaswami Ayyangar and *P. R. Varadarajan,* for Respondent.

R.M. *Petition allowed.*

Ganapatia Pillai, J. Srinivasalu Naidu *v.*
30th March, 1959. Thangavelu Chettiar.
A.A.A.O. No. 95 of 1957.

Madras Agriculturists Relief Act (*IV of* 1938) *and amending Act* (*XXIII of* 1948), *section* 16—*Scaling down under—Applicability—Judgment-debtor applying to set aside the* ex parte *decree against him—Application not pressed in view of compromise entered into under which decree-holder gave up a portion of the decree—If estops the judgment-debtor from applying for scaling down the decree.*

The relief of scaling down of a decree under section 16 of the Madras Agriculturists' Relief Act, 1938, is a separate one which could be claimed by a judgment-debtor by a separate application as the provisions came into force only in 1949. The mere fact that the debtor did not apply for the relief at the time of the passing of the decree will not be a bar. This will be so in cases falling both under sub-section (1) or sub-section (2) of the section.

(1953) 2 M.L.J. 184, held not good law.

1959 S.C.J. 788 : (1959) 2 M.L.J. (S.C.) 55 : (1959) 2 An.W.R. (S.C.) 55 : A.I.R. (1959) S.C. 275, referred.

The fact that a judgment-debtor who applied for setting aside an *ex parte* decree passed against him did not press the same in lieu of the decree-holder agreeing to give up a certain sum out of the decree does not amount to an estoppel and the judgment-debtor will still be entitled to claim the relief of scaling down the decree under the Act.

P. S. Srisailam, for Appellant.

K. Thiruvenkatachari, for Respondent.

R.M. *Appeal allowed.*

Ramachandra Ayyar, J.
2nd April, 1959.

Kamakshi *v.* Sinnachami Naidu.
C.R.P. No. 1606 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1955), *section* 3—*Applicability to cases of trespassers.*

Where there is an express allegation in a petition that the tenant has surrendered possession and later trespassed on the property, the procedure under section 3 of the Madras Cultivating Tenants' Protection Act could not apply. On the surrender by the tenant the relationship of landlord and tenant ceases between the parties and thereafter if there is a trespass the aggrieved party has to approach the Civil Court for remedy and not the Revenue Court under section 3 of the aforesaid Act.

M. Natesan, for Petitioner.

R. Ramasubba Ayyar, A. D. Sitaraman and *B. R. Dolia,* for Respondent.

R.M. ——— *Petition allowed.*

[Full Bench]

Rajamannar, C.J., Ramachandra Ayyar and Ganapatia Pillai, J.
8*th April,* 1959.

Lakshmipathy Naicker *v.* State of Madras.
W.P. Nos. 42 and 62 of 1956.

Madras Estates Land (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *sections* 12 *and* 15—*Petition for grant of ryotwari patta—Scheme of—Irrigation tank in an estate—When private land of the land-holder—Land-holder, if entitled to grant of patta as of right in respect of such tanks.*

In an estate as defined in the Madras Estates Land Act, 1908, a tank bed is not a communal poramboke. The property in the tank situate within the ambit of the estate would naturally vest in the proprietor. But his rights would be restricted in a tank which is the source of irrigation for the lands in the estate. The land-holder is under an obligation to preserve, maintain and repair such tanks and the ryots will have a right over the tank in the nature of easements. But there might be tanks in an estate in which the ryots would not have any rights customary or easementary. Such tanks would form the absolute property of the proprietor. In an ordinary ryotwari village it is not possible to conceive of the grant of a ryotwari patta with regard to a tank. As the object of the Madras Act XXVI of 1948 is to convert the zamindari estate into ryotwari tenure the provisions of the Act should be understood in relation to that purpose.

The scheme of sections 11 to 15 of the Act clearly shows that the right to a ryotwari patta in respect of the private lands of a land-holder is a matter for adjudication by the Settlement Officer and the land-holder has to make out his claim with reference to every field or survey number claimed by him.

An irrigation tank, though constructed on what was once the land-holder's private land, could not be held to be his private land so as to entitle him to the issue of a ryotwari patta under section 12 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. Such a right could not be justified on any theory of appurtenant of accessory rights. Whether the particular lands constitute private land has to be decided in each case. A land-holder will not be entitled to the grant of ryotwari patta in respect of a tank merely because it is situate within the boundary of his private land. If it is found in an enquiry under section 15 of the Act, that having regard to its size and the quantity of water it is nothing more than a well or a pond the land-holder will be entitled to have it included in the patta of the land of which it is a part. If on the other hand it is held that the tank is a source of irrigation for other lands, the tank would be Government property and the land-holder will not be entitled to obtain a patta for the same although the land in which it stands or the surrounding land may be the private land of the land-holder and to which he may be entitled to a patta.

V. Vedantachari and *V. C. Srikumar,* for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and the Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J. Rajagopalachariar *v.* State of Madras.
15th April, 1959. W.P. Nos. 41 & 42 of 1957.

Madras Land Revenue Surcharge Act (XIX of 1954) *and Madras Land Revenue (Additional Surcharge) Act (XXX of* 1955)—*Validity.*

It is now well-settled that under the scheme of the ryotwari settlement of land tenure in this part of the country the full ownership of the land is vested in the ryotwari proprietor and land revenue is a tax imposed by virtue of the prerogative right of the State and the liability to pay land revenue does not rest on any contract. This prerogative of the State has been followed by legislation, *viz.,* Madras Revenue Recovery Act, 1894. The actual levy of the tax was delegated to the Board of Revenue. A settlement once made would ordinarily hold good for a period of 30 years and the assessment could not be arbitrarily enhanced by an executive act of the Government during the period covered by the settlement as a settlement once arrived at is in the nature of an engagement between the Government and the ryotwari pattadar.

But this limitation cannot apply to the Legislature which has plenary powers of legislation. The Madras Land Revenue Surcharge Act (XIX of 1954) and Madras Land Revenue (Additional Surcharge) Act (XXX of 1955) being passed by the Legislature could not be assailed on the ground that if such an act has been done by the Executive it would be invalid as contravening the terms of the settlement. The Madras Acts XIX of 1954 and XXX of 1955 are valid enactments and are not discriminatory and do not violate Artilce 14 of the Constitution.

V. C. Viraraghavan and *P. S. Balakrishna Ayyar,* for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) and The Additional Government Pleader (*K. Veeraswami*) for Respondent.

R.M. *Petition dismissed.*

Subramanyam, J. Venkatasubramaniam *v.* Venkatasubbier.
16th April, 1959. S.A. No. 95 of 1957.

Practice—Plaintiff claiming to succeed to the estate of a deceased as collateral heir—Onus of proof.

Where a person claims to succeed to the estate of a deceased as collateral heir, the rule as to proof is that the person who so claims should set out the pedigree showing the names of the common ancestor from whom he and the last male-holder are descended or showing at any rate the names of the brothers from whom the claimant and the last male-holder are descended and prove the geneological table in all its stages, that is to say, as regards each individual intermediate ancestor of the claimant and the last male-holder right up to the common ancestor or the brothers.

K. S. Desikan and *K. Raman,* for Appellant.

K. S. Ramamurthi and *T. R. Mani,* for Respondents.

R.M. *Appeal allowed.*

Rajamannar, C.J. and Ganapathia Pillai, J. Muthia Chettiar *v.* Sa Ganesan.
21st April, 1959. A.A. O. No. 21 of 1959.

Representation of the People Act (XLIII of 1951), *sections* 77 (1) *and* (2) *and* 123 (6)—*Incurring of election expenses in excess of the permitted amount—Contravention of section* 77 (2)—*When a corrupt practice under section* 123 (6)—*Election expenses—What are—Value of free services—If to be included in Election expenses.*

A mere contravention of section 77 (1) or section 77 (2) of the Representation of the People Act, namely omission to include certain items of expenditure in the

account of election expenses will not by itself amount to a corrupt practice under section 123 (6) of the Act. Nor could an election candidate be guilty of corrupt practice by reason of the fact that certain vouchers filed by him for the expenses were not in accordance with law.

In calculating the total expenses incurred by a candidate on an election, only those items incurred or authorised by the candidate or his election agent that should be taken into account. It is not incumbent on the candidate to put a valuation on the free services rendered by others and add the same to the amount of expenses incurred.

(*English Case-law reviewed*—*Scheme of the provisions of the earlier Act and the scope of subsequent amendment explained*).

M. K. Nambiyar and *K. K. Venugopal*, for Appellant.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan, J. Venkatesan *v.* Maruda Padayachi.
21*st April*, 1959. C.R.P. No. 626 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 (2) (*b*) *and Tanjore Tenants and Pannaiyal Protection Act* (*XIV of* 1952)—*Extension of Madras Act* (*XXV of* 1955) *to Tanjore by Madras Act* (*XIV of* 1956)—*Acts injurious to land done before the coming into force of Act* (*XIV of* 1956)—*If a ground for eviction.*

Before the extension of the Madras Cultivating Tenants Protection Act, 1955, to Tanjore District, the provisions of Madras Ordinance XIV of 1952 and then the provisions of Madras Act XIV of 1952 applied to the District. One of the grounds of eviction of a tenant under those statutory provisions was that the tenant was guilty of acts injurious to the land. A similar provision is also contained in the later Madras Act XXV of 1955 which came into force from 1st October, 1956.

Even a tenant of land in Tanjore District who has been guilty of an act of waste prior to 1st October, 1956, could still be evicted under section 3(2) (*b*) of the Madras Cultivating Tenants Protction Act even though the said Act came into force in that area only from 1st October, 1956. The expression 'has done' indicates that the Act complained of should necessarily date back earlier to the date on which the Act was brought into force. Digging a deep pit in the land is an act injurious to the land.

T. S. Kuppuswami Ayyar, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. ——— *Petition allowed.*

Ramachandra Iyer, J. Doraiswami Pillai *v.* Rasu Nattar
21*st April*, 1959. C.R.P. No. 315 of 1959.

Madras Cultivating Tenants Protection Act, (*XXV of* 1955), *section* 4 (2) *and* (5)—*Application under for restoration into possession*—*If governed by the restrictive provisions under sub-section* (2)—*Validity.*

The terms of sub-section (5) of section 4 of the Madras Cultivating Tenants Protection Act are wide enough to include every person who would come within the definition of 'cultivating tenant' under the Act. It would comprehend a case not only of a cultivating tenant who would be entitled to come under sub-section (1) but also of others who had in their possession more than 6 2/3 acres of wet land. The exemption limit prescribed under section 4 (2) would apply only to a case under section 4 (1) of the Act and not to cases under section 4 (5). The sub-section is not discriminatory and is not invalid.

A. Sundaram Ayyar, for Petitioner.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Ramaswami*, for Respondent.

R.M. ——— *Petition dismissed.*

[FULL BENCH.]

Rajamannar, C.J., Ramachandra Iyer and Ganapathia Pillai, JJ.
25th February, 1959.

Muppadathi Pillai *v.* Krishnaswami Pillai.
S.A. No. 1080 of 1953.

Specific Relief Act (I of 1877), *sections* 39 *and* 41—*Scope and applicability.*

Section 39 of the Specific Relief Act embodies the principles of *quia timet* actions in which a party is allowed to anticipate a danger and institute a suit to cancel a document. Three conditions are requisite for the exercise of the jurisdiction of the Court under that section : (1) the instrument should be such that it is void or voidable against the plaintiff; (2) the plaintiff should reasonably apprehend serious injury by the instrument being left outstanding ; and (3) the Court should consider it proper to grant the relief of preventive justice. There could be no reasonable apprehension of any injury to a plaintiff where a third party asserting a hostile title to that of the plaintiff creates a document. To such cases section 39 could have no application and consequently the Court could have no jurisdiction under section 41 of the Act to direct payment of compensation.

(1950) 2 M.L.J. 587 and 37 M.L.J. 113, referred.

K. Vaitheeswaran, for Appellant.

Messrs. Chetty, Shetty and *V. Meenakshisundaram,* for Respondent.

R.M. —————— *Reference answered accordingly.*

Subramanyam, J.
3rd March, 1959.

Rangaraja Iyengar *v.* Achi Kannammal.
S.A. No. 84 of 1957.

Madras Land Encroachment Act (III of 1905), *section* 2—*Scope of—House-sites—What are—Whether buildings should be actually built on the site to render a site house-site.*

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 3 (*b*)—*Applicability of Land Encroachment Act to house-sites in estates.*

In order that a land may properly be described as house-site within the meaning of section 2 of the Madras Land Encroachment Act, 1905, it is not necessary that there should be a residential building actually constructed and standing on the site. Lands which are within the limits of the gramanatham and on which buildings or sheds may be put up when necessary should also be house-sites within the meaning of the section whether such buildings are constructed or not.

The provisions of section 3 (*b*) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, vests all the lands in the erstwhile estates in the Government and makes certain Acts applicable in ryotwari areas applicable to those lands also. The provisions as to vesting of lands under section 3 (*b*) of the Act should be read so as to be in conformance with the provisions regarding the applicability of the enactments relating to ryotwari areas. House-sites in gramanatham, therefore, could not stand vested in the Government under section 3 (*b*) of the Estates Abolition Act.

G. Jagadisa Ayyar, for Appellant.

P. S. Chandrasekhara Ayyar and *P. S. Ramachandra Ayyar,* for Respondent.

R.M. —————— *Appeal allowed: Leave granted.*

Rajagopalan, J.
26th March, 1959.

Narayanaswamy *v.* Ramier.
C.R.P. No. 419 of 1958.

Madras Indebted Agriculturists (Repayment of Debts) Act (I of 1955), *section* 2—Explanation I—*Scope of.*

Explanation I of section 2 of the Madras Indebted Agriculturists (Repayment of Debts) Act provides that where a Hindu joint family is an agriculturist as defined in the Act every coparcener thereof shall be deemed to be an agriculturist unless he falls under one or other of the sub-clauses (*i*) to (*v*). But the converse of this is not true. Where a joint family ceases to be an agriculturist as defined under the Act it cannot be said that every member of that joint family also ceases to be an agriculturist.

R. Viswanathan, for Petitioner.

T. R. Ramachandran, for Respondent.

R.M. —————— *Petition allowed.*

Balakrishna Ayyar, J.
8th April, 1959.

Royal Printing Works *v.* Industrial Tribunal, Madras.
W.P. No. 374 of 1958.

Industrial Disputes—Carelessness on the part of an employee—If could be punished.

Obiter.—Carelessness on the part of an employee can often be productive of more harm than deliberate wickedness or malevolence. Carelessness and indifference to duty on the part of an employee in relation to his work, if established by evidence would justify serious punishment by the employer.

M. P. Sundararajan, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *S. Mohan Kumaramangalam* and *K. V. Sankaran*, for Respondent.

R.M. — *Petition dismissed.*

Ramachandra Iyer, J.
21st April, 1959.

Ramaswami Naidu *v.* Salammal.
C.R.P. No. 1622 of 1958.

Madras Court-fees and Suits Valuation Act (*XXIV of* 1955), *Schedule II—Article* 11 (l) *and* (n)—*Filing of an award by an Arbitrator—Court-fee payable.*

Arbitration Act (*X of* 1940), *section* 14—*Filing of an award by an arbitrator—Court-fee payable.*

Under section 14 of the Arbitration Act there is a well-marked distinction between a case where an arbitrator himself applies to have the award filed and a case when the parties pray the Court for giving direction to him to file the award. Article 11 (*n*) of Schedule II of the Madras Court-fees and Suits Valuation Act would apply only to cases when the parties to an award seek a direction of the Court for directing an arbitrator to file the award. It cannot apply to cases when an arbitrator, without any direction of the Court, himself proceeds to file the award under section 14 (2) of the Arbitration Act. To such cases the residuary provision in Article 11 (*l*) of Schedule II of the Court-fees and Suits Valuation Act will apply.

D. Ramaswami Ayyangar and *S. Natarajan*, for Petitioner.

P. R. Varadarajan and The Additional Government Pleader (*K. Veeraswami*), for Respondents.

R.M. — *Petition allowed.*

Ramachandra Iyer, J.
22nd April, 1959.

Panchayat Board, Elathur *v.* Inspector of Local Boards.
W.P. No. 934 of 1958.

Madras Village Panchayats Act (*X of* 1900), *section* 3 (2) (*d*)—*Scope of Notice under.*

Under section 3 (2) (*d*) of the Madras Village Panchayats Act, 1950, an obligation is cast on the Inspector to give sufficient and reasonable notice to the Panchayat or Panchayats concerned before taking action under clause (*b*) or (*c*) of the section. This obligation cannot be evaded in the guise, that some subordinate officer had already appraised the panchayats concerned about the proposed action when it is proposed to take away a portion of the area of a Panchayat to form a new panchayat, the notice to the affected panchayat under section 3 (2) (*d*) of the Act should give the details of the lands that are proposed to be taken away so that the panchayat could consider the same and make its representations.

K. Parasaran and *V. Gopinathan*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. — *Rule absolute.*

Somasundaram, J.
24th April, 1959.

Thirupathi Chettiar, *In re.*
Crl. Rev. Case No. 738 of 1958.
Crl. Rev. Petition No. 706 of 1958.

Madras Gaming Act (*III of* 1930), *sections* 5 *and* 6—*Officer empowered to issue warrant for search himself conducting the search—Seizure of instruments of gaming—When evidence—'Common gaming house'—What is.*

It is no doubt true that under section 5 of the Madras Gaming Act it is open to a Police Officer empowered to issue a search warrant to himself conduct the search in-

stead of issuing a warrant to his subordinate. The instruments of gaming, if any, seized during such a raid would be evidence under section 6 of the Act in such cases also.

But in order to raise the presumption under section 6 of the Act, the officer issuing the warrant or making a raid should be satisfied that the place was used as a common gaming house. Mere gaming in a place will not make it a 'common gaming house' which has a particular meaning under the Act.

B. T. Sundararajan, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. *Conviction set aside.*

Ramachandra Iyer, J.
24th April, 1959.

Saradambal *v.*
Chief Controlling Revenue Authority.
W.P. No. 214 of 1957.

Stamp Act (II of 1899), *section* 57 (1)—*Reference to High Court under—If the Revenue Authority could be directed to refer a case by the issue of a writ—Difference between a reference by the Revenue Authority and a reference under directions of High Court.*

Constitution of India (1950)—*Article* 226—*Issue of writ under—If could apply to cases under section* 57 (1) *of the Stamp Act.*

It may be that on the terms of section 57 of the Stamp Act the Chief Controlling Revenue Authority would have jurisdiction to refer any matter under that section to the High Court only if it is pending before him. When once the Revenue Authority has decided a matter there would be no right to make a reference to the High Court.

But in cases arising under Article 226 of the Constitution when the assistance of the Court is sought to issue as appropriate writ to direct a reference under section 57 (1) of the Stamp Act the pendency of the case before the Revenue Authority is not of much importance. While the Revenue Authority may not have power to refer a matter under section 57 (1) of the Stamp Act when it is not pending before it the High Court can under Article 226 of the Constitution direct the Revenue Authority to refer a case under the section even after Revenue Authority has decided the matter finally.

A.I.R. 1958 All. 320, differed.

N. K. Mohanarangam Pillai and *N. K. Pattabiraman*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Directions given.*

Somasundaram, J.
1st May, 1959.

Oomayan *alias* Baluchamy, *In re.*
Crl. Rev. Case No. 347 of 1959.
(Case. Ref. No. 11 of 1959.)

Criminal Procedure Code (V of 1898), *section* 361—*Procedure under—If applicable to deaf and dumb accused.*

The procedure indicated under section 361 of the Criminal Procedure Code cannot be applied to the case of a deaf-mute because under that section whenever any evidence is given in a language not understood by the accused it should be interpreted to him in open Court in a language understood by him. A deaf and dumb man can understand by signs and gestures, which do not form a language within the meaning of section 361.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. *Reference returned.*

Ramachandra Ayyar, J.
12th May, 1959.

Sundaram *v.* Karuppuswami.
W.P. No. 796 of 1958.

Madras Village Panchayats Act (X of 1950), *section* 12 (6)—*Electoral rolls—Persons whose names were not on the electoral rolls of the Panchayat but who were directed to be included in the same—If can vote at an election.*

Section 12 (6) of the Madras Village Panchayats Act gives an unqualified right to all persons whose names are found on the electoral rolls of a Panchayat to vote at an election and there is no limitation that such names should be in the list before the receipt of nominations. Even those whose names have been included in the list just before the date of the election would be entitled to vote. But the sub-section is equally clear that persons whose names are not on the rolls of the Panchayat would have no right to vote at the election. The fact that such persons had in their hands orders of the appropriate authority directing their names to be included in the electoral rolls of the Panchayat would not make any difference.

T. Venkatadri and *P. R. Gokulakrishnan,* for Petitioner.

S. Mohan Kumaramangalam and The Additional Government Pleader (*K. Veeraswami*), for Respondents.

R.M. *Petition allowed.*

Subramaniam, J.
26th June, 1959.

Thanappa Kounder, *In re.*
Crl.M.P. No. 717 of 1959.

Criminal Procedure Code (V of 1898), *section* 145 (1)—*Scope and applicability.*

In order that a dispute relating to possession of land might give jurisdiction to a Magistrate to take action under section 145 (1), Criminal Procedure Code, the dispute need not be one relating to land or building claimed by a person as owner. Even the possession of a trustee or guardian will be protected under the provisions. So long as one person claims to be in possession to the exclusion of others and alleges that some other person seeks unlawfully by force to interfere with his possession which, if it is likely to lead to a breach of the peace, would justify and necessitate a Magistrate taking action under section 145, Criminal Procedure Code.

K. Narayanaswami Mudaliar, for Petitioner.

R.M. *Petition dismissed.*

Balakrishna Ayyar. J.
29th June, 1959.

Workers *v.* Manager, United Bleachers (Private) Ltd.
W.P. No. 62 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 2 (3) (*vi*) *and Schedule I, item* (*v*)—*Public utility service—'Cotton textiles'—If bleaching of cotton textiles is part of cotton textile industry to make it a public utility service.*

Schedule I of the Industrial Disputes Act enumerates certain industries which could be declared under the Act as public utility services. The cotton textiles industry which is item 5 in the Schedule would comprehend the entire process from the receipt of the cotton or yarn to the final stage when it is ready to go to the market and hence any industry engaged in bleaching cotton textiles should also be deemed to be engaged in the textile industry. The textile process, in its normal and well-understood sense, is large enough to include, in the present stage of development of the industry, bleaching, dyeing and other process required to finish the produce and make it marketable.

R. Ramasubbu Ayyar, A.D. Sitaraman and *B. R. Dolia,* for Petitioner.

V. Tyagarajan, M. R. Narayanaswami and *N. Kannan,* for Respondent.

R.M. *Petition dismissed.*

Ganapatia Pillai, J. Ganapathi Pillai *v.* Ekambaram.
10th March, 1959. C.R.P. Nos. 1851 and 1854 of 1957.

Madras Indebted Agriculturist (Re-payment of Debts) Act (I of 1955), *section* 4 *and Madras Indebted Agriculturists (Temporary Relief) Act (V of* 1954)*—Effect of, on limitation for actions for recovery of debt—Debt—If becomes payable by instalments—Limitation Act (IX of* 1908), *Article* 74*—If applicable.*

The combined effect of the two Madras Acts, V of 1954 and I of 1955, is to extend the period of limitation for recovery of certain debts against agriculturists by a period of one year, one month and 26 days. The effect of section 4 of Madras Act I of 1955 is not to attract the provision of Article 74 of the Limitation Act which applies to cases of promissory notes or bonds under which the debts are made payable by instalments. The fact that the debt due by an agriculturists has been made payable by instalments by the Legislature would not convert the promissory note or bond into one payable by instalments within the meaning of Article 74, which deals with the classification of the instruments under which money is payable and has no relevance to subsequent legislative enactments which make a debt payable in instalments, which is otherwise payable in lump-sum.

V. S. Rangachari and *N. Srinivasan*, for Petitioners.

R. T. Gopalakrishnan, for Respondent in C.R.P. No. 1854 of 1957.

R.M. ——— *Petition dismissed.*

Ramaswami, J. Ramaswami *v.* Muniswami.
31st March, 1959. S.A. No. 589 of 1957.

Easements—Easements of necessity and quasi-easements—Difference between—Right of irrigation from a common well—If a quasi-easement.

There is a clear distinction in law between easements of necessity and quasi-easements. Apparent and continuous easements which are necessary for the enjoyment of the dominant tenement in the state in which it was enjoyed at the time when it was severed from the servient tenament are called quasi-easements. While in case of easements of necessity, the necessity may be absolute, in cases of quasi-easements the necessity is a qualified one, *viz.*, that without it the property is not capable of being enjoyed in the way it was enjoyed before.

A right of irrigation is both apparent and continuous and is a quasi-easement.

A. Nagarajan and *A. Viswanathan*, for Appellant.

C. Natarajan, for Respondent.

R.M. ——— *Appeal allowed.*

Ramachandra Iyer, J. Sambasiva Chetty *v.* Mannankatti.
3rd April, 1959. A.A.O. No. 326 of 1958.

Workmen's Compensation Act (VIII of 1923), *section* 30*—Appeal under—Appeal filed without depositing the amount awarded as compensation—Return and re-presentation with deposit—If original presentation of appeal may be deemed proper by the subsequent deposit.*

An appeal presented under section 30 of the Workmen's Compensation Act without a certificate of the deposit of the amount of compensation awarded is not a proper presentation. Subsequent production of the certificate after the period of limitation could not validate the original invalid presentation.

P. Muthukumaraswami Mudaliar and *Venkatachalapathi*, for Appellant.

R. Punyakoti Chettiar and *T. S. Sundaram*, for Respondent.

R.M. ——— *Appeal dismissed.*

Ganapatia Pillai, J. Palaniswami *v.* Palaniswami.
3rd April, 1959. C.R.P. No. 1 of 1959.

Elections—Elections to panchayat, municipalities or local bodies—Election dispute—Power of tribunal to allow amendment—Scope and extent of.

It is no doubt true that in cases of municipal and panchayat elections there is no specific power conferred upon the tribunals appointed to decide election disputes, to allow amendments to an election petition. But such a power is exercised by

those tribunals also analogous to the power exercised by civil Courts under Order 6, rule 17, Civil Procedure Code. But the power does not extend to allowing a new charge to be added after the period of limitation has expired.

T. R. Srinivasan, for Petitioner.

S. Mohan, for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J. Qhamunnissa Begam *v.* Fatima Begam.
7th April, 1959. C.R.P. Nos. 1167 and 1734 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 37 (2)—*Suit by a Mahomedan co-sharer for partition—Claim of share in properties on the basis that they are joint properties though put in the name of defendants—Court-fee if should be paid on the market value of the shares claimed.*

Where a plaintiff, a Mohamedan co-sharer, claims partition and possession of his share in the estate of a deceased on the footing that though several items of properties were standing in the name of other co-sharers they really belong to the estate of the deceased, he could value the relief under section 37 (2) of the Madras Court-fees and Suits Valuation Act. So long as there is no allegation in the plaint that any of the co-sharers were claiming any item adversely to the others, the plaintiff should be deemed be in joint possession of the same. Where the plaintiff claims his share of moneys standing in the name of defendants on the allegation that they were put in their name nominally and they were for the benefit of the family the suit would fall under section 37 (2) of the Act and the plaintiff need not pay Court-fee on the value of his share.

(1955) Andh. W.R. 348, referred.

S. K. Ahmed Meeran, for Petitioner in C.R.P. No. 1167 of 1958.

T. S. Krishnamurthi Ayyar, for Petitioner in C.R.P. No. 1734 of 1958.

The Additional Government Pleader (*K. Veeraswami*), *N. C. Raghavachari, N. S. Varadachari* and *S. V. Kumaraswami,* for Respondent in both.

R.M. ——— *Petition allowed.*

Basheer Ahmed Sayeed, J. Paramasiva Thevar *v.* Raju Vijayakumara.
8th April, 1959. A.A.O. No. 183 of 1958.

Practice—Benamidar—Decree-holder dying after preliminary decree—If true owner can come on record in final decree proceedings.

Where in a suit for redemption a decree-holder dies after the passing of the preliminary decree and before the final decree is passed, it will be open to a person who claims to be the true owner and states that the erstwhile plaintiff was only a benamidar for him, to come on record and continue the proceedings.

(1942) 2 M.L.J. 463 : I.L.R. (1943) Mad. 164 (F.B.) ; I.L.R. 51 Mad. 219 : 53 M.L.J. 568 ; 68 L.W. 683, referred to.

A. Sundaram Ayyar, for Appellant.

K. S. Ramamurthi and *P. Viswanathan,* for Respondent.

R.M. ——— *Appeal dismissed : Leave granted.*

Balakrishna Ayyar, J. Trichy-Srirangam Transport Co. *v.*
13th April, 1959. Industrial Tribunal.
W.P. No. 48 of 1958.

Industrial disputes—Tribunal under—Powers of—If governed by principles of res judicata—*If could direct the introduction of a provident fund scheme—Employees' Provident Fund Act (XIX of* 1952), *if a bar to creation of other provident funds.*

It is no doubt true that the Employees Provident Fund Act enables only the Central Government to extend the application of the Act to certain establishments. But that does not mean that an Industrial Tribunal deciding a dispuee under the

Industrial Disputes Act could not direct the introduction of a provident fund for the workers in the establishment concerned in the dispute. Such a scheme will be outside the Employees Provident Fund Act and may also differ in may respects from the fund created under the Act.

It is no doubt true that the provisions of the Code of Civil Procedure relating to *res judicata* do not apply to the Tribunal under the Industrial Disputes Act. But the principle of *res judicata* is not peculiar to Civil Procedure Code and it would apply to all proceedings which involve adjudication of disputed rights. Adjudications that have become final cannot be reagitated even before an Industrial Tribunal. Whatever matter is referred to a Tribunal by the Government should be pressed before it and if any party fails to press any such claim they cannot be allowed to raise it again in relation to that period.

Section 6 of the Madras Act XII of 1949 validating certain awards is unconstitutional as offending against Article 14 of the Constitution. Moreover it has not the effect of reviving an award whieh has lapsed before the Act was passed.

V. Tyagarajan and *P. V. Marthandam*, for Petitioner.

R. Ramasubba Ayyar, A. D. Sitaraman, B. R. Dolia and *V. S. Ramakrishnan*, for Respondents.

R.M. ——— *Orders accordingly.*

Ramaswami, J.
21st April, 1959.

Joseph Nadar *v.* Devadasan.
S.A. No. 1201 of 1956.

Travancore Christian Succession Act (*II of* 1092), *sections* 19 *and* 24—*Scope of—Husband succeeding to wife's property—Nature of interest taken.*

Among Syrian Christians in the Travancore-Cochin State governed by the Travancore Christian Succession Act the husband's right to his deceased wife's property is only a life interest terminable at death or re-marriage.

S. Padmanabhan, for Appellant.

N. D. Jose, (Amicus Curiæ) for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
22nd April, 1959.

Devichand Jestimull & Co. *v.*
Collector of Central Excise.
W.P. Nos. 88, 109 to 111 of 1959.

Sea Customs Act (*VIII of* 1878), *section* 167 *and Schedule—Item* 8—*Scope of.*

To bring a person within the penal provisions of Item 8 of the Schedule to section 167 of the Sea Customs Act it is necessary to ascertain either that he imported the gold or was connected in the import of the gold. That is either he should have arranged for the import or abetted the same or received the same immediately after the import. To be in possession of gold or to buy or sell the same after the process of importation is complete even assuming that such importation is unlawful and independently of the series of acts connected with such importation will not fall within the terms of the aforesaid provision.

D. R. Venkatesa Ayyar and *R. Rangachariar*, for Petitioner in W.P. No. 88 of 1959.

K. Rajah Ayyar, K. C. Jacob and *S. K. L. Ratan*, for Petitioners in W.P. Nos. 109 to 111 of 1959.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent in both.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J.
1st May, 1959.

Sajjan Bank (Private) Ltd. *v.*
Reserve Bank of India.
W.P. No. 373 of 1957.

Banking Companies Act (*X of* 1949), *section* 22—*Validity—If opposed to Article* 19 (1) *of the Constitution of India—Delegation of power to Reserve Bank—If unconstitutional.*

Section 22 of the Banking Companies Act, 1949, which introduces a complete system of licensing of banks by the Reserve Bank is not unconstitutional and is not opposed to the fundamental right of a citizen to carry on banking business. The system of licensing contemplated under the section applies only to the particular

system of banking where the customers are enabled to operate by cheques and the object of the licensing is only to regulate the business of banking in that form. The power of licensing is not vested with a mere officer of the Bank and the standard for the exercise of the power is laid down in the section itself, and the power granted to the Reserve Bank is not an arbitrary one. Nor could it be said that the delegation of the power to the Reserve Bank is in any way invalid.

(History of the establishment and function of the Reserve Bank and the passing of the Banking Companies Act traced).

K. Rajah Ayyar, S. Mohan Kumaramangalam and *K. V. Sankaran*, for Petitioner.

Messrs. King and *Partridge*, for Respondent.

R.M. ——— *Petition dismissed.*

Somasundaram, J. Kasi Thevar *v.* Chinniah Konar.
30th June, 1959. Crl.Rev. Case No. 124 of 1959.

Criminal Procedure Code (V of 1898), section 479-A—Applicability—Proceedings under—Scope and effect of.

The conditions necessary for the application of section 479-A of the Code of Criminal Procedure are that the Court before it delivers its judgment or at any rate at the time of delivery of the judgment must form an opinion that a particular witness or witnesses is or are giving false evidence. If the necessary materials were not placed before the Court before the Judgment and if the Court could not form any opinion about the falsity of the evidence the Court cannot record any finding under the section. If section 479-A could not apply the bar under sub-section (6) of the section would not also apply and such cases can be proceeded under sections 476 to 479 of the Code.

A.I.R. 1958 All. 364 and A.I.R. 1959 Punj. 145, differed.

(1958) M.L.J. (Crl.) 491, explained.

A.I.R. 1958 A.P. 657 and 1958 M.L.J. (Crl.) 233 and 859, referred.

M. Srinivasagopalan, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) for the State.

S. V. Jayaram, for the Accused.

R.M. ——— *Petition allowed.*

Rajagopalan, J. Rathinavel *v.* Natchiappa.
30th June, 1959. C.R.P. No. 1348 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), section 70—Court of first instance determining certain amount as due and Court-fee paid thereon—Appellate Court reducing the amount due—Refund of Court-fee paid on the excess—If permissible.

Where the lower Court determined the amount due in a suit at a particular figure and a party was obliged to pay the Court-fee on that amount, and the appellate Court fixed the amount at a lower figure, the party who has paid Court-fee on the larger amount is entitled to claim refund of the Court-fee paid on the excess amount. Section 70 of the Madras Court-fees and Suits Valuation Act would govern such cases of mistake also, the mistake being that of the lower Court which is rectified by the appellate Court. A party in such a case need not wait to pay Court-fee till the disposal of the appeal or revision.

P. S. Chandrasekhara Ayyar and *P. S. Ramachandran*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Petition allowed.*

Somasundaram and Ramaswami, JJ. Parvathi, *In re.*
2nd July, 1959. Crl. Appeal No. 113 of 1959.

Penal Code—Section 309—Attempt to commit suicide—If punishable with punitive sentence.

Per *Curiam*: While a Court would not be justified in treating an attempted suicide as a trivial offence, it cannot consider it as a very serious crime either, meriting deterent sentence.

T. L. Nagaraja Rao, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for State.

R.M. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ.
4th August, 1959.

State of Saurashtra *v.* Memon Haji Ismail Haji.
C.A. No. 185 of 1955.

"Act of State"—Exercise of sovereign power—Extra-Provincial Jurisdiction Act.

The act of the Dominion in assuming the administration of Junagadh was an act of State. The fact that the Sovereign allows the inhabitants to retain their old laws and customs does not make the Sovereign subject to them and all rights under those laws are held at the pleasure of the Sovereign.

There is nothing to prove that the Dominion has expressly or tacitly recognized the old rights. The burden of proving that lay on the respondent-plaintiff.

An act of State is an exercise of Sovereign power against an alien and neither intended nor purporting to be legally founded. A defence of this kind does not seek to justify the action with reference to the law but questions the very jurisdiction of the Courts to pronounce upon the legality or justice of the action.

161 E.R. 774 ; 98 E.R. 1045 ; 7 M.I.A. 555 at 578 and L.R. 42 I.A. 357 and L.R. 51 I.A. 360, considered.

C. K. Daphtary, for Appellant.

I. N. Shroff, for Respondent.

H. J. Umrigar, for Interveners.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati and M. Hidayatullah, JJ.
4th August, 1959.

Godrej & Co. *v.* C.I.T., Bombay.
C.A. No. 183 of 1956.

Income-tax Act (XI of 1922)*—Compensation to Managing Agents—Meaning of Capital receipt or revenue receipt.*

It is not always easy to decide whether a particular payment to a person is his income or whether it is to be regarded as his capital receipt. Eminent Judges have observed that "income" is a word of the broadest connotation and that it is difficult, and perhaps impossible, to define it by any precise general formula. Though in general the distinction between an income and a capital receipt is well recognised, cases do arise where the item lies on the border-line and the problem has to be solved on the particular facts of each case. No infallible criterion or test has been or can be laid down and the decided cases are only helpful in that they indicate the kind of consideration which may relevantly be borne in mind in appreciating the problem. The character of payment received may vary according to the circumstances. Thus, the amount received as consideration for the sale of a plot of land may ordinarily be capital, but if the business of the recipient is to buy and sell lands, it may well be his income. It is, therefore, necessary to approach the problem keeping in view the particular facts and circumstances in which it has arisen".

Managing agents in consideration of the Company paying Rs. 7,50,000 as compensation for releasing the Company from the onerous term as to remuneration contained in the managing agency agreement accepted remuneration for the remaining term of their agency at 10 per cent. of the net annual profits in lieu of the higher remuneration which they are now entitled under the provisions of the existing managing agency agreement whether capital receipt or revenue receipt. (Question discussed.)

Cases considered : 12 T.C. 427, 16 T.C. 605, C.A. No. 340 of 1957 decided on 20th March, 1959 (Notes of Recent Cases, M.L.J. Vol. 116—16, page 45).

A. V. V. Sastri, for Appellant.

M. C. Setalvad, Attorney-General of India, for Respondent.

G.R. ——— *Appeal allowed.*

Ganapatia Pillai, J.
20th March, 1959.

Kanthimathi Mills *v.*
Spl. Land Acquisition Officer, Madras.
A.A.O. Nos. 41 and 42 of 1957.

Civil Procedure Code (*V of* 1908), *section* 144—*Restitution—Principle of—Applicability.*

The basis of the rule of restitution is not making the unsuccessful party disgorge any profit he had made out of the decree that was reversed on appeal but giving compensation to the successful party in the appeal for the loss which he had suffered by obeying the decree of the lower Court. Upon this principle, where a party has been obliged to deposit a certain amount into Court by the lower Court's order and the amount due by him has subsequently been reduced on appeal, it makes no difference to the applicability of the principle of restitution whether the original payment was made voluntarily or under threat of execution. Such a party would be entitled to claim interest by way of restitution, on the excess amount he was obliged to deposit by virtue of the decree of the lower Court.

V. S. Ramakrishnan, for Appellant.

The Government Pleader (*B. V. Viswanatha Ayyar*), *K. S. Ramamurthi* and *T. R. Mani,* for Respondent.

R.M. ——— *Orders accordingly.*

Rajamannar, C.J., and Ganapatia Pillai, J.
24th April, 1959.

Vajrapuri Naidu *v.*
New Theatres Carnatic Talkies.
L.P.A. No. 75 of 1958.

Madras City Tenants Protection Act (*III of* 1922), *sections* 3, 9, *and* 12—*Constitutional validity—If offending Articles* 19 (1) (*f*), 19 (5) *and* 31 (2) *of the Constitution—Scheme of the Act.*

The right given to a tenant under the Madras City Tenants Protection Act to acquire the land in his occupation is irrespective of considerations like the area of the land, the period or the purpose of the lease or the size or character of the building put up by the tenant. The contractual rights between a landlord and his tenant are not interfered with by the provisions of the Act till either a suit for ejectment is instituted by the landlord or a decree for that purpose is obtained. On the happening of this contingency two rights are conferred on the tenant, *viz.*, first to obtain compensation for the building under section 3 and second the right to purchase the land on payment of its value under section 9 of the Act. Section 9 of the Act is not opposed to Article 19 (1) (*f*) or (5) of the Constitution of India. Having regard to the history and object of the Act, the legislation is intended to advance public benefit and convenience and it does not offend against Article 31 (2) of the Constitution of India.

The proviso to section 12 of the Act should be limited to those cases where the stipulation in the contract regarding erection of building relating to facts such as the size, the cost, the design of the building and such other cognate matters. To construe the proviso to mean that a landlord could stipulate with the tenant prohibiting him from erecting any building on the land will abrogate the very protection given under the section to the tenants.

The word 'building' in section 2 (1) of the Act will include business premises, and dwelling houses and would include a building like a cinema-theatre.

G. R. Gagadisan, P. S. Ramachandran and *V. S. Ramakrishnan,* for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*), *R. G. Rajan* and *T. Ramakrishna,* for Respondents.

The Additional Government Pleader (*K. Veeraswami*), for State.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J., and Ganapatia Pillai, J.
1st May, 1959.

Abdul Subhan Sahib & Sons *v.*
State of Madras.
W.A. No. 72 of 1958.

Madras Buildings (*Lease and Rent Control*) *Act* (*XXV of* 1949), *section* 13—*Exercise of power of exemption under—When improper.*

In deciding whether a particular order of exemption made by the State Government under section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949,

is in conformity with the object and policy of the Act, the fact that the tenant was obtaining an unconscionable advantage at the expense of the owner of the property, *viz.*, by profiteering by sub-letting portions of the premises, is irrelevant. The Act provides a machinery by which it is open to the parties to have the fair rent fixed.

The Act no doubt takes away the unrestricted power of the landlord to evict tenants. But section 7 of the Act provides two sets of circumstances under which tenants could be evicted, *viz.*, that provided under sub-sections (2) and (3) of the section. In cases where a owner requires a non-residential building in the occupation of a tenant for his own use the policy of the Act is to deny the right of the landlord to evict a tenant unless the landlord himself does not occupy another non-residential building in the same city. Procuring a premises for a landlord for a purpose for which he would not be entitled to evict a tenant under the provisions of the Act (where an express provision exists) could not be in furtherance of the object of the Act. The Act itself provides for reasonable grounds of eviction and if a particular case does not fall within the provisions of the Act permitting such eviction the exercise of the power of exemption under section 13 of the Act for achieving such eviction would not be a reasonable exercise of the power.

What constitutes an arbitrary exercise of power under the section has to be decided on the facts of each case. Taking irrelevant factors into consideration, taking into consideration a reason which the legislature, by reason of the specific provision in the Act, had decided is not a ground justifying eviction of a tenant, would be instances of arbitrary exercise of the power of exemption. The Act provides for certain grounds of eviction and it would not be open to the Government to add to these permitted grounds either on the score of inconvenience of the landlord or on the ground that the landlord has made fair proposals to provide alternative accommodation to the tenant.

T. Venkatadri and *M. A. Sattar Sayeed*, for Appellant.

The Additional Government Pleader (*K. Veeraswami*) and *E. A. Viswanathan*, for Respondents.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J. Sha Shogalal *v.* State of Madras.
19*th May*, 1959. W.P. No. 996 of 1958.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 13—*Validity of an order of exemption under—How determined—Middlemen making profit—If could complain against an order of exemption from protection.*

Section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, is an enabling provision intended to meet a contingency when the remedy provided by the statute would be insufficient or inadequate in regard to a particular case. Apart from the question of hardship there may be cases where the restriction imposed on the landlord by the statute may benefit persons not within the contemplation of the Act and beyond the needs of the enactment.

The Rent Control legislation is not intended to protect middlemen to make profits. But the specific remedies open to a landlord under the Act are inadequate to render justice in such cases.

Though the definition of the terms ' landlord ' and ' tenant ' in the Act is wide enough to include a principal lessee who has sublet the property, still the object of the Act is only to protect the tenants in occupation though in its operation it has to give protection to a wider class of tenants. The presence of middlemen, far from achieving the object of the Act in regulating the rent, would add to it to the extent of his profits. If the benefit of the Act is extended to middlemen who take properties on lease, not for their own occupation, but as a business to earn profit by sub-letting, the constitutional validity of the Act itself would be doubtful.

In adjudging whether the exercise of the power under section 13 of the Act was proper a distinction should be made between the cases where the tenant is merely a middleman and the cases where the tenant is in actual occupation of the demised

property, though the Act no doubt would apply to both. In the later category of cases the power of exemption should be exercised with caution and if the Government aids a landlord by exempting the building in cases where he has been unsuccessful in an application under section 7 of the Act it would be a case of misuse of the statutory power as the exemption would enable an eviction and would therefore amount to a disregard of the standards fixed by the Act and opposed to its ject. This principle would not, however, apply to the former category of cases where by virtue of an exemption order only the middleman is denied protection under the Act.

The issue of a notice is not a condition precedent to the assumption of jurisdiction under section 13 of the Act though a notice is necessary to the affected party on grounds of natural justice. The object of such a notice is to give the affected party such information as would enable him to know the facts on which the proposed action is taken.

V. Tyagarajan and *M. A. Rajagopalan*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) and *V. S. Rangachari*, for Respondents 1 and 2.

R.M. ——— *Petition dismissed.*

Rajagopalan, J.
29th June, 1959.

Visvalingam Pillai *v.* Karthikeya Mudaliar.
C.R.P. No. 892 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 4-*B* (1) *&* (3)—*Applicability of to lease prior to the Act—Revenue Court if can order costs in proceedings under.*

Section 4-B (1) of the Madras Cultivating Tenants Protection Act would apply to an agreement of tenancy which the parties desire to enter into during the currency of the Act independent of the fact whether under the agreement the tenant in possession was liable to be evicted or not. The scheme of the Act is to provide for exchange of leases and counterparts even during the period when the Statute secures immunity to the tenant from eviction. The Act recognises the need for a lease in writing and a landlord is entitled to call upon the tenant to execute a lease in conformity with the provisions of the Statute. Failure to do so would entail the penalty under section 4-B (3) of the Act.

But the Revenue Court has no jurisdiction to order any party to pay costs to the other side in proceedings under section 4-B (3) of the Act though it has jurisdiction to levy fine.

T. S. Kuppuswami Ayyar and *R. Narayanan*, for Petitioner.

K. S. Naidu and *R. Krishnamurthi*, for Respondent.

R.M. ——— *Order modified in part.*

Ramachandra Iyer, J.
30th June, 1959.

Kutty Ettan Raja *v.* Madhavan.
C.R.P. Nos. 1888 and 1889 of 1958.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 (2)—*Assignee of the interest of a cultivating tenant—If could be brought on record—Power of Revenue Court under.*

The provisions of the Code of Civil Procedure do not apply to proceedings under the Madras Cultivating Tenants' Protection Act. The Act itself does not provide for the assignee of the interest of a cultivating tenant to get himself impleaded as a party to the proceedings under the Act. Moreover the definition of the term 'cultivating tenant' itself makes it clear that the assignee of a cultivating tenant, could not become a cultivating tenant in respect of the holding held by his assignor the reason being that there could be no privity of contract between the landlord and the assignee of the lease. The question will be different in case of succession to the interest of a deceased cultivating tenant. Hence a Revenue Court under the Act has no jurisdiction to implead such assignees as parties to proceedings before it.

A. K. Sriraman, for Petitioner.

C. T. Verghese, for Respondent.

R.M. ——— *Petition allowed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. N. Wanchoo and M. Hidayatullah, JJ.
14th August, 1959.

Raja of Venkatagiri *v.* State of Andhra Pradesh.
C.A. Nos. 188-190 of 1958.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 20—*Scope.*

" The Abolition Act is one of the Acts included in the Ninth Schedule and is protected by Article 31-B of the Constitution of India. In the circumstances, the Court must interpret the Abolition Act as it finds it by giving the ordinary and natural meaning to the words used by the Madras Legislature and uninfluenced by any preconceived notion as to validity of the Abolition Act.

In our view the scheme of the Act is to render ineffective all rights created after July 1, 1945, for a period exceeding one year ".

A. V. V. Shastri, for Appellants.

H. N. Sanyal, Additional Solicitor-General, for Respondent.

K. R. Chaudhari, for Respondent No. 2.

G.R. *Appeals dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. N. Wanchoo and M. Hidayatullah, JJ.
20th August, 1959.

Hindustan Forest Co., Ltd. *v.* Lal Chand.
C.A. No. 161 of 1955.

Jammu and Kashmir Limitation Act, Article 115, *corresponding to Limitation Act (IX of* 1908), *Article* 85—*What is mutual account.*

In the present case there was no ' mutual account ' and hence the suit did not fall within Article 115 of the Jammu and Kashmir Limitation Act.

The law under Article 85 of the Indian Limitation is laid down in I.L.R. 58 Cal. 649.

S. K. Kapur, for Appellant.

Bhawanilal, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st August, 1959.

Gullapalli Nageswara Rao *v.* State of Andhra Pradesh.
C.A. Nos. 198 to 200 of 1959.

Chief Minister—Performance of statutory duty—Doctrine of bias—Applicability.

The principle was that when a person is subject to bias in favour of or against a party to a dispute then he ought not to take part in the decision of that dispute. In the present case, however, it could not be said that in performing a statutory duty the Chief Minister could be said to be biassed, nor had it been shown by evidence that he stood committed to any particular point of view so as to disqualify him from acting.

N. C. Chatterjee, for Appellant.

D. Narasaraju, Advocate-General of Andhra Pradesh, for Respondent.

G.R. *Appeals dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.
21st August, 1959.

Shiva Jute Baling, Ltd. *v.* Hindley & Co., Ltd.
C.A. No. 262 of 1956.

Arbitration (Protocol and Convention) Act.

The award was not bad as it had been made while proceedings were pending in India under the Indian Arbitration Act and also because the award granted penal damages in contravention of the law as it prevailed in India.

C. B. Aggarwala, for Appellant.

B. Sen, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam, A. K. Sarkar and K. N. Wanchoo, JJ.
27th August, 1959.

Gohar Begum *v.* Suggi *alias* Nazma Begum.
C.A. No. 11 of 1959.

Criminal Procedure Code (V of 1898), *section* 491—*Custody of a child—Recovery.*

" We further see no reason why the appellant should have been asked to proceed under the Guardians and Wards Act for recovering the custody of the child. She had of course the right to do so. But she had also a clear right to an order of the custody of the child under section 491 of the Code. The fact that she had a right under the Guardians and Wards Act is no justification for denying her the right under section 491. That is well established by case-law.

The learned advocate for the respondent said, we should not interfere with the order of the High Court as it was a discretionary order. The learned Judges, however, have not given any reason which led them to exercise their discretion in the way they did. We are not satisfied that the discretion was judicially exercised".

K. M. Desai, for Appellant.

Ganpat Rai, for Respondent Nos. 1 to 4 and 6.

K. L. Hathi, for Respondent No. 5.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. N. Wanchoo and M. Hidayatullah, JJ.
28th August, 1959.

Babulal Parate *v.* State of Bombay.
C.A. No. 342 of 1956.

States Re-organisation Act (XXXVII of 1956), *section* 8—*Article* 3 *of the Constitution of India as amended by Constitution fifth Amendment Act—Article* 122.

On the construction of Article 3 of the Constitution " All that is contemplated is that the Parliament should have before it the views of the State Legislatures as to the proposal contained in the Bill and then it will be free to deal with the Bill as it thinks fit. The Proviso does not say that if and when a proposal is contained in the Bill and is modified subsequently by an amendment properly moved and accepted in Parliament there must be fresh reference to the State Legislature and a fresh Bill must be introduced."

We recognise that the formation of a new composite State of Bombay as in section 8 of the Act was substantial modification of the original proposal of 3 units contained in the Bill. That, however, does not mean that it was not a proper amendment of the original proposal or the State Legislature had no opportunity of expressing its views on all the aspects of the subject-matter of the proposal.

R. S. V. Mani, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam and K. N. Wanchoo, JJ.
3rd September, 1959.

Viswanath *v.* State of Uttar Pradesh.
Cr.A. No. 32 of 1958.

Criminal law—Right of private self-defence—Extent.

" When the appellant's sister was being abducted, even though by her husband, and there was an assault on her and she was compelled by force to go away from her father's place, the appellant will have the right of private self-defence of the body of his sister against the assault with the intention of abducting her by force and the right would extend to the causing of death ". In the present case the Court held that the right had not been exceeded and the appellant was entitled to be acquitted.

S. P. Sinha, for Appellant.

G. C. Mathur, for Respondent.

G.R. *Appeal allowed.*

Ramachandra Iyer, J.
1st July, 1959.

Kanakasabai *v.* Muthayyan.
C.R.P. Nos. 19 to 22 of 1959.

Tanjore Tenants and Pannaiyal Protection Act (XIV of 1952), *sections* 12 (1)*and* (13) (1) *—Power of Conciliation Officer to decide incidental questions—What orders are appealable.*

It is no doubt true that section 12 (1) of the Tanjore Tenants and Pannaiyal Protection Act, 1952, does not specifically enable a Conciliation Officer to decide the questions whether a particular person is a pannaiyal or not and whether a landlord is entitled to the exemption under the Act. Those questions could nevertheless be considered as incidental or collateral, but only as incidental, to the adjudication of the question of re-instatement of the dismissed pannaiyal under section 12 (1) of the Act. If, however, the question of such relationship is a substantial point in dispute the jurisdiction of the Conciliation Officer could be exercised only under section 13 (1) of the Act and any order made under that sub-section will be appealable under section 13 (2) of the Act.

T. S. Kuppuswami Ayyar and *T. R. Venkataraman,* for Petitioner.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Ramaswami,* for Respondents.

R.M. *Petitions allowed : Case remanded.*

Rajagopalan, J.
3rd July, 1959.

Gangadhara Mudaliar *v.* Chotulal Sowcar.
C.R.P. No. 1377 of 1958.

*Garnishee—Order against—*Ex parte *order—If could be set aside—If governed by any period of limitation.*

A Court has jurisdiction to set aside a garnishee order, made *ex parte,* even though the order has been made absolute, provided the Court is satisfied that there is sufficient justification for so doing. There is no specific provision of law either, prescribing any period of limitation to such applications.

Quaere.—Whether the delay in filing an application should be taken into account in deciding whether the *ex parte* order is to be set aside or not ?

N. C. Vijiaraghavachariar and *N. C. Srinivasan*, for Petitioner.

G. V. Subramanya Ayyar, for Respondent.

R.M. *Petition remanded.*

Balakrishna Ayyar, J. Pioneer Motors *v.* State Transport Authority.
6th July, 1959. W.P. No. 963 of 1957.

Motor Vehicles Act (*III of* 1939), *section* 64-A—*Power of State Transport Appellate Tribunal under to revise an order made in revision by the State Transport Authority.*

Section 64-A of the Motor Vehicles Act is wide enough to confer a power on the State Transport Appellate Tribunal to entertain a revision against an order made by the State Transport Authority in exercise of its revisional jurisdiction.

K. Parasuraman, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Order quashed.*

Rajamannar, C.J., and Ganapatia Pillai, J. Collector of Tanjore *v.*
13th July, 1959. Venkataswami Naidu.
S.T.P. No. 11 of 1959.

Madras Estates (*Supplementary*) *Act* (*XXX of* 1956), *section* 4—*Delay in filing an application under—If could be excused by the Special Appellate Tribunal.*

Limitation Act (*IX of* 1908), *section* 5—*If applicable to proceedings under the Madras Act* (*XXX of* 1956).

There is no specific provision in the Madras Estates (Supplementary) Act, 1956, which confers jurisdiction on the Special Appellate Tribunal to condone any delay in filing an application under section 4 of the Act nor has the Tribunal any inherent jurisdiction to excuse the delay in filing an application before it. The provisions of section 5 of the Limitation Act could not be invoked in such cases as they would not fall within any of the categories mentioned in the section.

The Government Pleader (*K. Veeraswami*), for Appellant.

R. Sundaralingam, for Respondent.

R.M. *Application dismissed.*

Ramaswami, J. G. S. Naidu, *In re.*
4th August, 1959. Crl. R. C. No. 1082 of 1958.
(Crl. R. P. No. 1035 of 1958.)

Madras City Police Act (*III of* 1888), *sections* 3 *and* 75—*Public place—What is—Verandah of a shop—If a public place.*

Section 3 of the Madras City Police Act defines a public place and it is now well settled that a 'public place' is one where the public go, no matter whether they have a right to do so or not. Places where the public are actually in the habit of going must be deemed to be a public place. As such the verandah of a shop may be deemed to be a public place.

M. S. Sethu and *R. N. George*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for State.

R.M. *Petition dismissed.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and K. Subba Rao, JJ.
28th August, 1959.

Rm. Ni. Ramaswami Chettiar *v.* Official Receiver.
C. A. No. 207 of 1955.

Limitation Act (IX of 1908), Article 182 (5)—Provincial Insolvency Act (V of 1920), section 54—Meaning of word ' void '.

In section 54 of the Provincial Insolvency Act the word ' void ' means voidable and a transfer which can be avoided under section 54 of Provincial Insolvency Act, is valid as between the transferor and transferee and is void only against the Official Receiver and hence a transferee until the transfer is set aside is the only person entitled to execute the decree ; and any application for execution made by the transferee are proper applications made in accordance with law by a person competent to make the same to a proper Court. Even where the order of adjudication is based on the act of insolvency constituted by a transfer of property found to be a fraudulent preference, the transfer stands till it is set aside.

M. S. K. Aiyangar, for Appellant.

A. V. V. Shastri, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., M. Hidayatullah and K. C. Das Gupta, JJ.
7th September, 1959.

Radha Prasad Singh *v.* Gajadhar Singh
C. A. No. 19 of 1954.

Practice—Appeal—Question of fact—Interference.

The question as to what should be the right approach for a Court of appeal in deciding a question of fact already decided in one way by the Judge in the Court of first instance, has often engaged the attention of the Court, though the views expressed have not been uniform. Emphasis has been laid in some cases on the importance of the Court of appeal deciding for itself the question of fact when the appeal is on fact, though remembering that it should not lightly do so not having had the advantage which the trial Judge had of seeing the witnesses. More emphasis has been laid in other cases on the importance of not reversing the trial Judge's findings of facts without compelling reasons. All the Courts in all the cases have stressed the rule which the Court of appeal should observe for themselves : that a Judge sitting in appeal not having had the opportunity of seeing and hearing the witnesses should think twice and more than twice before reversing the findings of fact arrived at by the trial Judge who has had that opportunity. To say that however is not to show that the Court of appeal will never reverse a finding of fact of the trial Court.

16 I.A. 105; L.R. (1898) 1 Ch. 704; (1947) 1 All E.R. 587; (1955) 1 All E.R. 326; (1950) S.C.R. 781; I.L.R. 43 Cal. 833, referred to.

L. K. Jha, for Appellant.

G. S. Pathak, for Respondent No. 1.

S. D. Sikhri, for Respondents Nos. 3 and 4.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. N. Wanchoo and M. Hidayatullah, JJ.
10th September, 1959.

Rehman Shagoo *v.* State of Jammu and Kashmir.
Cr. A. No. 60 of 1959.

Jammu and Kashmir Enemy Agents Ordinance—Explosive Substances Act (VI of 1908)—Public Security Act—Article 14 of the Constitution of India.

" Certain offences may be so heinous or serious that they may in certain circumstances be treated as a class and tried in a different way. The offence treated by section 3 of the Jammu and Kashmir Enemy Agents Ordinance is not found as

such in the Penal Code but is a new offence of an aggravated kind which may in the circumstances prevailing in the State be treated as different from the ordinary offences and may well be dealt with by a drastic procedure without encountering the charge of violation of the equal protection clause (Article 14).

In pith and substance the Ordinance dealt with public order and criminal law and procedure and could not come under the head "defence". The argument that the Ordinance was beyond legislative competence of His Highness was, therefore, rejected.

R. S. V. Mani, for Appellant.

Jaswant Singh, Advocate-General and *G. S. Pathak*, Senior Advocate, for Respondent.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, S. K. Das and M. Hidayatullah, JJ.
11th September, 1959.

The A.C.C. Ltd., (Chaibasa) *v.* Its Workmen.
C. A. No. 87 of 1958.

Industrial Disputes Act (XIV of 1947), *sections* 25-*C and* 25-*E—Lay off compensation.*

No hard or fast rule or test could be devised to determine whether any two or more units comprised one or separate establishments. It would be necessary to examine in each case the relationship between the units taking into consideration: (1) ownership, (2) control and supervision, (3) finance, (4) management, (5) geographical proximity, and (6) general unity of purpose and functional integrality. A consideration of these factors would be the basis of deciding whether the different units could be considered as parts of a single establishment.

In the present appeal the two units when considered in their true relationship constituted one integrated whole and consequently they formed one establishment for the purposes of section 25-C, consequently the Award of the Tribunal was set aside and the workmen's claim to lay off compensation under the Industrial Disputes Act was disallowed.

R. J. Kolah, for Appellant.

B. C. Ghosh, for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

S. J. Imam and K. Subba Rao, JJ.
14th September, 1959.

State of Bihar *v.* Hiralal Kejriwal.
Cr. A. No. 36 of 1958.

Essential Commodities Act (X of 1955), sections 7 *and* 16—*Cotton Textile (Control of Movement Order* (1948), *section* 3—*Essential Supplies (Temporary Powers) Act (XXIV of* 1946)—*Criminal Procedure Code (V of* 1898), *section* 438.

An Order made or deemed to be made under the Commodities Ordinance, 1955, cannot be described as a law other than Essential Commodities Ordinance whereunder it is made. Such an Order is comprehended by clause (*a*) of section 16 (1) itself, and therefore clause (*b*) thereof has no application to it. In this view an interpretation different from that we have put on the provisions of section 16 of the Ordinance cannot be given to sub-section (2) of section 16 of the Act. For the reasons we have given in interpreting the provisions of section 16 of the Ordinance, we hold that under section 16 (2) both the Order and the Acts enumerated in the second part of it survived the expiry of the Ordinance and continued in force under the Act. For the above reasons we hold that the prosecution was validly launched against the accused under section 3 of the Order.

K. P. Verma and R. C. Prasad, for Appellant.

H. J. Umrigar and *B. P. Maheshwari*, for Respondents.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam and K. Subba Rao, JJ.
15th September, 1959.

Jethanand Betab *v.* Delhi Administration
Cr.A. No. 185 of 1957.

Wireless Telegraphy (Amendment) Act (XXXI of 1949), *section* 6 (1-*A*)—*Object of.*

"Act XVII of 1933 was passed to prohibit the possession of a wireless apparatus without a licence. Subsequently the Legislature thought that possession of a wireless transmitter was a graver offence, sometimes involving the security of State, and so an amendment was made in 1949 constituting the possession of such apparatus a graver offence and imposing a more severe punishment":

M. B. Lall, for Appellant.

M. S. Bindhra and *R. H. Dhebar,* for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and K. Subba Rao, JJ.
24th September, 1959.

Punjab National Bank *v.* Its Workmen.
C.A. Nos. 519-521 of 1958.

Trade Union .Act (XVI of 1926)—*Industrial Employment (Standing Orders) Act (XX of* 1926)—*Industrial Disputes Act (XIV of* 1947), *sections* 33 *and* 33-*A*—*Scope.*

"It can be justly claimed that though we have witnessed capital labour conflicts in our country, on the whole neither party has departed from the pursuit of peaceful methods, and both parties submit their disputes to be resolved in accordance with the provisions of the Act."

"Thus there can be no doubt that in an enquiry under section 33-A of the Industrial Disputes Act the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of section 33 by the employer. After the contravention is proved it would still be open to the employer to justify the impugned dismissal on merits. That is a part of the dispute which the Tribunal has to consider because the complaint made by the employees is treated as an industrial dispute and all the relevant aspects of the said dispute fell to be considered under section 33-A ".

Regarding the "pen-down strike", the Court held, " we are prepared to concede that in the surcharged atmosphere, which generally accompanies strikes and when passions are aroused, a large scale and continuous pen-down strike may lead to untoward consequences. But, on the other hand,even in the case of such a strike the employer is not without a remedy. He may bar the entry of the strikers within the premises by adopting effective and legitimate methods, as in fact the bank did in the present case from April 23. He may call upon the employees to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper enquiries according to the standing orders, and pass proper orders against them subject to the relevant provisions of the Act."

Out of 150 employees if the Bank has failed to establish its specific case against any of the 136 employees, there is no reason why the general Rule should not prevail and employee should not get the relief of reinstatement.

H. N. Sanyal, Additional Solicitor General of India and *R. L. Anand,* for Appellant and Respondent in cross appeal.

M. C. Setalvad, Attorney General of India, for Respondent and appellant in cross appeal.

G.R. *Appeal dismissed with regard to* 136 *employees.*

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Rajamannar, C.J., and Ganapathia Pillai, J.
7th April, 1959.

Meyappa Chettiar *v.*
Murugappa & Sons.
Appeals Nos. 150, 152 of 1952.

Transfer of Property Act (IV of 1882), *section* 82—*Scope of—Contribution—Principle of.*

Section 82 of the Transfer of Property Act proceeds on the basic principle of the unity of the mortgage debt. The principle of contribution comes into existence only with reference to the liability of the property which has borne the burden of more than one mortgage debt. The first part of the section deals with a case of mortgage over the property owned by two or more persons in distinct and separate rights. The second part deals with a case, where, out of two separate properties belonging to the same owner, one is mortgaged to secure one debt and subsequently both are mortgaged to secure another debt. The property which is subject to both the debts is held liable to contribute rateably to the second debt only after deducting the amount of the former debt from the value of the property out of which it has been paid. In both cases the right of contribution is available only against persons who stand in the position of co-mortgagors or their successors in interest or against the same property subject to two different mortgages. Apart from the statutory provisions a claim for contribution can be founded on the principles of a common burden shared by many people, but discharged by one, with the result that the remaining shares enjoyed the benefit of the discharge. This principle of law applies in many situations as between co-sharers or co-tenants, partners, co-owners, co-parceners and so on. The basis of contribution in all such cases is not only the common ownership of property but also a common liability which was discharged by one.

R. Gopalaswami Ayyangar, for Appellants.

T. Venkatadri, E. A. Viswanathan, C. Sundaram, K. Parasurama Ayyar, for Respondents.

R.M. *Orders accordingly.*

Balakrishna Ayyar, J.
29th June, 1959.

Metro Goldwyn Meyer (India) Ltd. *v.*
Industrial Tribunal, Madras.
W.A. No. 49 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 10—*Retrenchment—Scope of the Tribunal's powers to inquire into the need for.*

It is not for a Tribunal under the Industrial Disputes Act to decide how the business of a company is to be conducted. Whether a future year would produce profits or loss is a matter for the management to anticipate and provide for. It may be that the anticipation of the management may turn out to be erroneous. But the responsibility to take a decision is theirs and the Industrial Tribunal has nothing to do with it. That the Tribunal is inclined to take a more opitimistic view of the prospects of a business is not relevant so long as the *bona fides* of the management in effecting retrenchment is not questioned. Further it is for the management to decide what work it will do and how many men it will employ to do it, whether they will expand their activities or contract it and so on. Nor is it necessary for a management to wait till actual loss occurs before effecting a retrenchment so long as their decision to effect retrenchment is *bona fide* and based on their normal business aspects and there is no question of any intention to victimise. It is not necessary to show that there is a loss *in praesenti* or actual reduction of business on the date of retrenchment to justify a decision of the management to effect a retrenchment.

V. Tyagarajan and *M. C. Raghavachari*, for Appellants.

D. Padmanabhan and *B. Kalyanasundaram*, for Respondents.

R.M. *Petition allowed in part.*

Ramachandra Ayyar, J.
1st July, 1959.

Parameswaran *v.* Sarveswaran.
C.R.P. No. 1027 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 36 (1)—*Suit for accounts of dissolved partnership—Estimate by plaintiff—Court if can go behind.*

While it is true generally that a Court is not bound by the valuation of the relief given by the plaintiff its power to go behind it is also limited to ascertaining the real value from the allegations in the plaint, which should be assumed to be correct for the purpose. Its power is limited only to ascertain the plaintiff's estimate and not to substitute its own estimate. If the estimate given by a plaintiff is on the face of it a sham one or so obviously wrong the Court can ask the plaintiff to make a proper estimate. But mere inaccuracy in the estimate will not make it a sham one and it is not for the Court to embark upon an inquiry as to the result of an account taking. Reality and not accuracy is the test for ascertaining a proper valuation under section 36 (1) of the Madras Court-fees and Suits Valuation Act.

M. S. Venkatarama Ayyar and *V. Krishnan*, for Petitioner.

Messrs. Row and Reddy and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. *Petition allowed.*

Ramachandra Ayyar, J.
1st July, 1959.

Lakshmana *v.* Thiagaraja Mudaliar.
C.R.P. No. 2120 of 1958.
C.R.P. No. 17 of 1959.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956), *section* 4 (3)—*'Pathukattu tenure'—If connotes a permanent right of occupancy—Fair rent—If could be fixed.*

Words and Phrases—'Pathukattu tenure'—Meaning of.

The word Pathukattu (Tamil) means a ryot's usual holding and does not imply necessarily a permanent tenancy. The mere use of the word 'Pathukattu' in a tenancy does not mean that there is a permanent tenancy right in the land.

The limitation laid down in section 4(3) of the Madras Cultivating Tenants (Payment of Fair Rent) Act would not apply to cases where the period fixed under the contractual tenancy has expired and a landlord is entitled to apply to the Rent Court to fix the fair rent in respect of the tenancy continuing after the contract period. In fixing the fair rent the Rent Court would be entitled, and indeed bound, to take into consideration not only the income from the lands but also the trees standing thereon as part of the demised land.

V. Venkataraman, for Petitioner.

K. S. Naidu, for Respondent.

R.M. *Petition dismissed.*

Ganapathia Pillai, J.
3rd July, 1959.

Ahmed Rowther *v.* Bathumul Bai.
A.A.O. No. 356 of 1956.

Civil Procedure Code (V of 1908), *Order* 41, *rules* 23 *and* 25—*Remand by Appellate Court—Scope of.*

Rules 23 and 25 of Order 41 of the Code of Civil Procedure does not enable an Appellate Court to remand a suit for retrial merely on the ground that reception of additional evidence is necessary. Rule 23 refers to cases of remand where a decree is reversed on appeal and such decrees were based on a preliminary point. Rule

25 provide for an Appellate Court directing the trial Court to take additional evidence required and to return the evidence to the Appellate Court together with its findings, if necessary.

K. V. Srinivasa Ayyar, for Appellant.

A. Sundaram Ayyar and *P. Balasubramaniam*, for Respondents.

R.M. *Order set aside.*

Ganapathia Pillai, J. Paramasivan *v.* Sevasami.
3rd July, 1959. C.R.P. No. 388 of 1956.

Madras Indebted Agriculturists (Repayment of debts) Act (*I of* 1955), *section* 2(*a*)—*Agriculturist—Exception—Joint family—Payment of kist in excess of the limit prescribed by Statute—Notional share of each member below the statutory limit—Such members if entitled to the benefits of the Act.*

The liability to pay kist on lands owned by a Hindu joint family is an entire one and it will not be open to any member to say that he will pay the proportionate kist on his share of the family property unless there is a partition. So long as he remains joint he is liable to pay the entire land revenue due upon the family lands. Hence when such a family is assessed to land revenue exceeding the statutory limits every member of the family will be excluded from the benefit of the Act. It is not open to such a member to contend that his share of the land revenue, if a partition had taken place, would be below the statutory exception.

Petitioner not represented.

S. Jagannathan for *T. R. Ramachandran*, for Respondent.

R.M. *Petition dismissed.*

Balakrishna Ayyar, J. Sri Ranga Vilas Ginning Mills. *v.*
17th July, 1959. Industrial Tribunal, Madras.
W.P. No. 1019 of 1958.

Industrial Disputes Act (*XIV of* 1947), *section* 33 (2)—*Jurisdiction of Tribunal under—Scope and extent of.*

In disposing of an application under section 33 (2) of the Industrial Disputes Act for permission to dismiss an employee during the pendency of the adjudication of a dispute, the Tribunal has only to consider whether there was a *prima facie* case for dismissal of the workman or whether the management was actuated by improper motives or whether there was any unfair labour practice or victimisation involved in the action proposed to be taken. If there are no *mala fides* or unfair labour practice or victimisation involved the Tribunal is bound to give the permission asked for provided a *prima facie* case was made out for the proposed dismissal. It is not for the Tribunal to satisfy itself whether the charges framed against the employee has been proved.

(1953) S.C.J. 333 ; A.I.R. 1953 S.C. 241 ; (1957) S.C.J. 47 : (1956) S.C.R. 916 : A.I.R. 1957 S.C. 82 ; A.I.R. 1958 S.C. 79 : (1958) S.C.J. 255 : 1958 M.L.J. (Crl.) 208, referred.

M. R. Narayanaswami and *N. Kannan*, for Petitioner.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Ramaswami*, for Respondents.

R.M. *Petition allowed.*

Ramachandra Ayyar, J.
11th July, 1959.

Sri Pilaravaneswaraswami Temple *v.* Govindaram Varriar.
C.R.P. Nos. 1061 and 1522 of 1958.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956)*—Denial of the right of the tenant as cultivating tenant—If estops the landlord from suing for arrears of rent in civil Court—Jurisdiction of civil and revenue Courts.*

Every tenant of an agricultural holding will not be a cultivating tenant within the meaning of the Fair Rent Act. Hence the fact that a landlord denied the right of a tenant to apply under the Fair Rent Act will not estop him from claiming the rent through a civil Court. A Rent Tribunal under the Fair Rent Act will have to decide whether the tenant is a ' cultivating tenant ' though incidentally and only incidentally it might also investigate whether there is at all the relationship of landlord and tenant between the parties. A civil Court in a suit to recover the rent is not bound by such incidental findings and if on its own investigation finds that the tenant is cultivating tenant, within the Act it may decline to pass a decree unless the fair rent is fixed by the Tribunal. The mere fact that the landlord took up a false plea before the Tribunal cannot relieve the civil Court of its duty to decide the question arising in the dispute.

A. Sundaram Ayyar, for Petitioner.

S. Sitarama Ayyar and *S. Rajarama Ayyar,* for Respondent.

R.M. *Petition allowed.*

Subrahmanyam, J.
30th July, 1959.

Pankajammal *v.* Sambamoorthy.
S.A. No. 795 of 1957.

Civil Procedure Code (V of 1908), *section* 73 (1) *and Limitation Act (IX of* 1908), *Article* 62*—Limitation for suits claiming rateable distribution—Time—How computed.*

Under Article 62 of the Limitation Act the time from which limitation runs for a suit against a defendant claiming rateable distribution under section 73 (1) of the Civil Procedure Code is the time when the defendant received the money. For purposes of Article 62 of the Limitation Act the defendant must be deemed to have received the money on the date of confirmation of the sale in cases where the defendant himself purchases and sets off the sale price against his decree.

K. S. Desikan and *K. Raman,* for Appellant.

A. Narasimhachari and *A. N. Rajagopalan,* for Respondent.

R.M. *Appeal dismissed.*

Ramaswami, J.
30th July, 1959.

Kasia Pillai *v.* Unnamalai Ammal.
S.A. No. 1047 of 1957.

Words and Phrases—' Sarvaswathanthramai ' (Tamil)—Meaning of.

The word ' Sarvaswathanthramai ' occurring in a settlement or gift deed indicates an absolute estate.

T. Venkatadri and *K. Natarajan,* for Appellant.

O. Radhakrishnan, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Ayyar, J.
31st July, 1959.

Karuppannan *v.* Sadaya Maistry.
C.R.P. No. 1925 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *sections* 41 (2) *and* 50*—Suit to set aside a summary decision—Court-fee payable.*

Section 41 (2) of the Madras Court-fees and Suits Valuation Act provides for valuation of suits to set aside a summary decision of a civil or revenue Court. Sec-

tion 50 is in the nature of a residuary section providing for cases not otherwise provided for in the Act. In suits to set aside a summary order it is not correct to say that the subject-matter of the suit is the summary order itself. Such suits contemplate the adjudication of title and are not mere appeals from the summary orders. Hence it cannot be said as a rule that such suits are incapable of valuation. Under the new Madras Court-fees Act such suits are divided into two categories—those capable of valuation and those which are not so capable. Incidental reliefs such as injunction or possession will not alter the character of the suit so long as the subject-matter of the suit has a market value. The subject-matter of such suits should be held to be what the summary orders were concerned with *viz.*, the immoveable property and Court-fee has to be paid on the proportionate market-value as laid down in section 41 (2) of the Act.

Messrs. Pais, Lobo and Alvares, for Petitioner.

The Government Pleader (*K. Veeraswami*) and *K. Vaitheeswaran*, for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami, J.
3*rd August*, 1959.

Rangammal, *In re.*
Crl. R.C. Nos. 1090 and 1091 of 1958.
Crl. R. Pet. Nos. 1043 and 1044 of 1958.
Cr.R.P. No. 299 of 1959.

Criminal Procedure Code (*V of* 1898), *section* 146 (*f*) (*d*)—*Finding of Civil Court in a reference under—If could be appealed against independently.*

Section 146(1) (*d*) of the Code of Criminal Procedure lays down that no appeal, revision or review shall lie from any finding of a civil Court given in a reference under section 146 of the Code, the reason being that the finding of the Civil Court gets merged in the decision of the magistrate and all the grounds that can be urged against the findings can be urged in the proceedings against the final decision.

S. Mohan Kumaramangalam and *K.V. Sankaran*, for Petitioner in Cr.R.P. No. 299 of 1959 and Cr.R.C. No. 1090 of 1958.

Public Prosecutor (*P. S. Kailasam*), for in Cr.R.C. Nos. 1090 and 1091 of 1958.

K. Narayanaswami and *T. S. Ramaswami*, for Respondent in Cr.R.P. No. 299 of 1959 and Respondent in Cr.R.C. Nos. 1090 and 1091 of 1958.

R.M. ——— *Petition dismissed.*

Rajamannar, C.J., and Ganapatia Pillai, J.
5*th August*, 1959.

Velusamy Thevar *v.* Raja Nadar.
A.A.O. No. 49 of 1959.

Representation of the People Act (*XLVIII of* 1951), *sections* 7 (*d*), 33 (5) *and* 36 (4) —*Defects in certified copy of electoral roll—If a ground for rejection of nominations paper—Object of provision—Any service undertaken by the appropriate Government—Undergoing training in Basic Training school—If a disqualification.*

The object of section 33 (5) of the Representation of the People Act is that there should be evidence that the candidate in question is an elector of a different constituency. If that fact is reasonably clear any defect in the certified copy of the electoral roll filed, even if it is a defect consisting of an interpolation or scoring off any part the copy will not amount to a defect of a substantial character to warrant the rejection of a nomination paper. Undergoing training in a Basic Training School conducted by the Government is not a disqualification within the meaning of section 7 (*d*) of the Act.

K. S. Desikan and *K. Raman*, for Appellant.

T. Martin, for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
11th August, 1959.

Govindarajan *v.*
Regional Inspector, M.C.
and L.B., Vellore.
W.P. No. 6 of 1959.

Madras Village Panchayats Act (*X of* 1950), *section* 11—'*Election*'—*Meaning of.*

A number of processes are involved in an election and the word 'Election' has to be interpreted according to the context in which it appears. The word ' election in sub-section (2) of section 11 of the Madras Village Panchayats Act would include not merely the stage or process of polling but also the process of nomination and the sub-section relating to filling of vacancy would apply in all cases where no person is elected whatever be the reason therefor. The sub-section would take effect in every case where the authorities have done everything necessary to hold an election and no person is elected either due to want of nomination, no votes being polled or all the votes polled being invalid.

S. Mohan Kumaramangalam, K. V. Sankaran and *S. Sethuratnam,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *T. R. Srinivasan* and *A. C. Muniswami Reddi,* for Respondent.

R.M. *Petition allowed.*

Somasundaram, J.
12th August, 1959.

Public Prosecutor *v.*
Rangaswami.
Cr. Appeal No. 478 of 1958.

Prevention of Food Adulteration Act (*XXXVII of* 1954), *section* 10 (7)—*Duty of Inspector under—Object and extent of.*

Under section 10 (7) of the Prevention of Food Adulteration Act where a Food Inspector takes any action under it, he shall as far as possible call not less than two persons to be present at the time when such action is taken and take their signatures. This safeguard is provided because of the severity of the sentence sought to be imposed on offenders under the Act. But the Inspector would have complied with the procedure prescribed under the section if he has called two independent witnesses. He cannot compel the witnesses nor need he desist from taking samples if the witnesses refuse to come. It is his duty to call witnesses and if they do not come to attest there is no obligation on him to call any further witness.

The Public Prosecutor (*P. S. Kailasam*), for Appellant.

C. K. Venkatanarasimhan, for Respondent.

R.M. *Appeal dismissed.*

Ananthanarayanan, J.
19th August, 1959.

Krishna Iyer *v.*
Health Officer, Pudukottai
Municipality.
Crl. R.C. No. 50 of 1959.
(Crl. R.P. No. 50 of 1959.)

Prevention of Food Adulteration Act (*XXXVII of* 1954), *section* 16 (1) *and rule* 49 (2)—*Keeping chilly paste in an imperfectly tinned container in a hotel—If an offence.*

Though the language of rule 49 (2) of the Prevention of Food Adulteration Rules is not very happy, still having regard to the context and the broad purpose of the legislation the rule will apply to any food or ingredient of food which is ultimately intended for sale whether directly as such or as part of some other food prepared with it. Hence where chilly paste is kept in an imperfect container in a hotel, the rule will be attracted as the chilly paste is intended for use in the preparations made in the hotel.

K. S. Varadachari and *S. Krishnamurthi,* for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. *Sentence reduced.*

Ananthanarayanan, J.
20th August, 1959.

Adimoola Mudaliar, *In re.*
Crl. R. C. Nos. 37 and 67 of 1959.
(Crl. R. P. Nos. 27 and 67 of 1959.)

Penal Code (XLV of 1860), *sections* 378 *and* 425—*Offence under—What amounts to—Compelling a person to pay his lawful dues by witholding his property—If an offence.*

In order to constitute an offence of theft or mischief the necessary criminal intention has to be established. In the absence of such an intention the mere fact that a person removed another's property with a view to compelling the other to pay up his lawful dues, such as rent, etc., will not make him an offender. Forcible removal of property of another may amount to a tort but not a penal offence unless it is accompanied by the intention to cause wrongful loss or obtain wrongful gain.

14 C.W.N. 936 ; A.I.R. 1921 Pat. 390, referred.

K. Kalyanasundaram, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. *Petitions allowed.*

Somasundaram, J.
26th August, 1959.

Krishnamurthi, *In re.*
Crl. Appeal No. 110 of 1959.

Penal Code (XLV of 1860), *section* 161—*Receipt of illegal gratification—Frame of charge under—Need to conform to the requirements of section.*

In a prosecution for an offence under section 161 of the Penal Code it is necessary to prove all the ingredients of the offence as set out in the section. Mere receipt of money by a public servant in order to get a job for another person somewhere would not by itself necessarily be an offence under section 161 of Indian Penal Code. The rendering or attempting to render any service with any public servant should be referred to in the charge and established before an accused could be convicted of an offence under that section.

A. S. Sivakaminathan and *T. R. Gnanasekaran*, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. *Conviction set aside.*

Balakrishna Ayyar, J.
21st July, 1959.

Express Newspapers (Private) Ltd. Madurai *v.* Industrial Tribunal, Madras.
W.P. No. 184 of 1959.

Industrial Disputes Act (XIV of 1947)—*Tribunal under—Jurisdiction of in matters relating to dismissal for misconduct.*

In matters of discipline such as the dismissal of a workman for misconduct it is not for the tribunal under the Industrial Disputes Act to take evidence and decide for itself whether the workman in question merited dismissal. All that it could decide is whether there was want of good faith on the part of the management or whether there was any basic error or violation of principles of natural justice. It is impossible in an establishment to define exhaustively all the duties which a particular workman is to do. A compositor in a press will be under an obligation to do the work of 'joining' which is part of his legitimate duties.

M. R. Narayanaswami, for Petitioner.

S. Mohankumaramangalam, K. V. Sankaran and *S. Ramaswami*, for Respondent.

R.M. *Rule absolute.*

Balakrishna Ayyar, J.
27th July, 1959.

P. Orr & Sons (Private) Ltd. *v.* Presiding Officer, Labour Tribunal.
W.P. No. 13 of 1958.

Industrial Disputes Act (XIV of 1947), *sections* 33 *and* 33-*A—Scope of—Dismissal of workmen during the pendency of Conciliation Proceedings—Contravention of the section—If makes the dismissal void—Jurisdiction of tribunal under.*

On the language of the sections and having regard to their scheme it cannot be said that an order passed by a management in contravention of section 33 of the Industrial Disputes Act would be null and void. Far from it the Act provides penalties for such contravention. On a complaint made under section 33-A of the Act it cannot be said that the only jurisdiction of the tribunal is to direct re-instatement of the employees concerned. The Tribunal will have jurisdiction to decide the merits of the dispute as an industrial dispute and make suitable orders as the merits of the case warrant.

A.I.R. 1953 Bom. 133; (1955) S.C.J. 253: (1955) 1 M.L.J. (S.C.) 148; A.I.R. 1958 S.C. 761, followed.

(1954) 1 L.L.J. 635 held not correct.

M. K. Nambiyar, K. K. Venugopal and *S. S. Sivaprakasa*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *S. Mohan Kumaramangalam* and *K. V. Sankaran*, for Respondents.

R.M. *Order quashed.*

Rajagopalan, J.
7th August, 1959.

Jamal Mohammad *v.* Tribunal for Disciplinary Proceedings, Madras.
W.P. Nos. 324 and 666 of 1959.

Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 *and the Tribunal under—Nature of.*

The Madras Civil Services (Disciplinary Proceedings) Tribunal Rules framed by the Government under Article 309 of the Constitution and other enabling powers though in essence statutory rules, are only rules to regulate conditions of service of civil servants under its administrative control. A breach of such rule by itself with nothing more cannot confer any justiciable right. The Tribunal set up under the rules, despite its composition of judicial officers, is only an administrative tribunal and it is absolutely in the discretion of the Government to refer or not any matter to it. Similarly despite the judicial trappings which characterise the enquiry conducted by the tribunal, its report to the Government cannot be equated to a decision by a

judicial or quasi-judicial tribunal and a writ of *certiorari* or prohibition cannot be issued to set aside such a report.

S. Mohankumaramangalam and *K. V. Sankaran*, for Petitioner.

The Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Petition dismissed.*

[FULL BENCH].
Somasundaram, Basheer Ahmed and Ramaswami. JJ.
19th August, 1959.

Employees State Insurance Corporation, Madras *v.* Haji Mohd. Ismail Saheb.
Crl. Mis. Petn. No. 821 of 1958.

Criminal Procedure Code (*V of* 1898), *sections* 346 (1) *and* 526 (1)—*Power of High Court to direct trial of cases before Criminal Court not having territorial jurisdiction in respect of particular cases.*

Employees State Insurance Act (XXXIV *of* 1948), *sections* 39 *and* 40—*Contribution by employees—Failure to pay—Offence if committed within the local limits where the Corporation Office is situated—Office of employee outside such local limits—Effect.*

The High Court may, in the circumstances contemplated in clauses (*a*) to (*e*) of section 526 (1) of the Criminal Procedure Code, clothe with jurisdiction any Court, not empowered under sections 177 to 184 of the Code to enquire into any offences and try the same provided that in other respects that Court is competent to inquire into and try such offences.

37 M.L.J. 60 : I.L.R. 42 Mad. 791, followed.

22 M.L.J. 141 : I.L.R. 36 Mad. 387, held not good law.

The section empowers the High Court to confer jurisdiction upon a Court not having local or territorial jurisdiction, to try an offence, if it is otherwise competent to try such offences.

Section 346 (1) of the Code is wide enough to include cases of want of territorial or local jurisdiction in the magistrate concerned.

A.I.R. 1945 Mad. 526, differed.

Apart from the general law that it is the duty of the debtor to seek his creditor and pay the dues, under the scheme of the Employees' State Insurance Act, 1948, it is the duty of the employer to make the contribution due by him at the office of the State Insurance Corporation. A breach of the duty imposed by the Statute would constitute an offence triable by a Court within the local limits of whose jurisdiction the office of the Corporation is situate.

Per *Basheer Ahmed Sayeed, J.*—"A patent distinction exists between the powers exercisable by the High Court under section 24 of the Code of Civil Procedure and the powers exercisable under section 526 (1) of the Code of Criminal Procedure in regard to cases of want of territorial jurisdiction. A reading of section 526 (1) of the Code of Criminal Procedure discloses that the powers of the High Court under it are far wider than that contemplated under section 24 of the Civil Procedure Code. Section 526 (1) (*e*) (i) of the Code specifically vests the High Court with powers to order that any offence may be inquired into or tried by any Court not empowered under sections 177 to 184 of the Code, but in other respects competent to inquire into and try such offences, whenever it is made to appear to the High Court that such order is expedient for the ends of justice or is required by any provisions of the Code or will tend to the general convenience of the parties or witnesses."

The Advocate-General (*V. K. Tiruvenkatachari*) and The Public Prosecutor (*P. S. Kailasam*), for Petitioners.

T. R. Thyagarajan, P. S. Chinnappa, A. Jagannatha Rao, A. Nagarajan and *A. Viswanathan*, for Respondents.

R.M. *Orders accordingly.*

Rajagopala Ayyangar, J.
19th August, 1959.

Salem-Shevapet Sri Venkateswara Bank, Ltd. *v.* K. K. Krishnan.
W.P. No. 376 of 1957.

Madras Shops and Establishments Act (XXXVI of 1947), *section* 41—*Appeal under —Officer if bound to inquire into the merits of the case.*

Section 41 (1) of the Madras Shops and Establishments Act enacts a rule of law, different from the Common Law as to contractual rights of master and servant, which restricts the right of the employer to dispense with the services of an employee only for a reasonable cause and after giving one month's notice. Where the dismissal is effected on the ground of misconduct of the employee the statute insists on the charge of misconduct being held to be proved by statisfactory evidence recorded at an enquiry held for the purpose. It is the duty of the employer to conform to the requirements of the Statute and when once the appellate authority holds that the mandatory provisions of the section have not been complied with it is the duty of that authority to allow the appeal. The appellate authority is not intended to be a forum where an inquiry into the misconduct of the employee justifying his dismissal could be gone into.

M. K. Nambiyar, K. K. Venugopal and *O. K. Ramalingam*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) and *Messrs. Row and Reddy*. for Respondent.

R.M. *Petition dismissed.*

Ganapatia Pillai, J.
21st August, 1959.

Janakamma *v.* Rangaraj.
C.R.P. No. 2068 of 1958.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7-*A* (4) *and Rule* 9 *of the Rules and section* 12—*Power of remand by Appellate Authority—Scope and extent of.*

An order passed under section 7 (*a*) (4) of the Madras Buildings (Lease and Rent Control) Act could not be deemed an *ex parte* order within the scope of rule 9 of the Rules, where the tenant was represented by counsel and the arrears of rent were not paid. In the absence of an appeal against such an order, it is not open to the tenant to file an application to set aside the order on the footing that it was made *ex parte.* The mere fact that an appeal was filed against the order refusing to set aside the alleged *ex parte* order and the appellate Court remanded the matter to the Controller cannot give it any greater validity in law.In such cases acceptance by the other side of the cost awarded by the order of remand cannot make the order valid. An order of eviction passed under section 7-A (4) of the Act is the result of failure to pay the rent before the hearing and such an order has nothing to do with the original default complained of in the main application by the landlord.. In an appeal against an order made under section 7-A (4) of the Act the Appellate Authority cannot call for a finding whether the default on which the original petition was based was wilful or not. An order of remand by the Appellate Authority on a point not arising before the Rent Controller is imcompetent.

T. Venkatadri and *K. Natarajan* for Petitioner.

M. R. Vijayarangam for Respondent.

R.M. *Petition allowed.*

Balakrishna Ayyar, J.
7th September, 1959.

Seshadri *v.* Commissioner, Vellore Municipality.
W.P. No. 929 of 1957.

Government servants—Disciplinary proceedings—Duty of the person to submit to an inquiry—Bias as a disqualification—What amounts to.

Government officials who are faced with disciplinary proceedings must present their case to the authority constituted to conduct the enquiry, whatever that authority may be. Boycot and non-co-operation are not methods suited to such inquiries.

Where the inquiring officer is biased against the person against whom charges are framed and where he has pre-determined that the person is guilty of the charges framed, there could be no fair inquiry by him. Merely because the enquiring officer is the head of an office or of a department and is therefore generally responsible for the events that happen in his office it cannot be said that he is disqualified from holding an inquiry into the conduct of his subordinate. But where the responsibility of the officer in the transactions complained of is not merely general but is more intimate and specific than such officer will be disqualified from holding the enquiry.

Messrs. Jan and *San,* for Petitioner.

K. Veeraswami (The Government Pleader), for Respondent.

R.M.

Rule absolute.

Rajamannar, C.J. and Ganapatia Pillai, J.
11th September, 1959.

Buckingham & Carnatic Company, Ltd., Madras *v.* Industrial Tribunal Madras.
W.A. Nos. 49 and 50 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 2 (*k*)*—Industrial dispute—Collective disputes by majority of workers—What amounts to—Several units of an establishment—If should be treated as one.*

Though the definition of the term 'industrial dispute' in section 2 (*k*) of the Industrial Disputes Act is very wide it is now well established that only collective disputes and not a mere individual dispute that will fall within the scope of the Act. But even an individual dispute can become an industrial dispute if it is taken up by a union of workers or a number of workmen. In an establishment which employs a large number of workmen having defined work and falling into several groups it is possible that an industrial dispute could arise between the management and a particular group of workmen. It cannot be said in such cases that a majority of the total number of employees in the entire establishment should take up the cause. In establishments which employ several well-defined sections of workmen and has several units, it cannot be said that the entire extablishment should be treated as one unit to decide whether the dispute raised by the workmen in one unit has the backing of a majority or not.

K. Rajah Ayyar, for *M/s. King* and *Partridge,* for Appellants.

S. Mohankumaramangalam and *K. V. Sankaran,* for Respondent.

R.M.

Appeals dismissed.

[SUPREME COURT].

S. J. Imam and *K. N. Wanchoo, JJ.*
15th September, 1959.

Abdul Rehman Mahamad Yusul *v.* Mahamed Haji Ahmed Agbotwala.
Cr.A. No. 174 of 1956.

Criminal Procedure Code (V of 1898), *sections* 198 *and* 199—*Scope of provisions.*

" In our opinion the provisions of section 198, Criminal Procedure Code, are mandatory. Even in section 238 of the Code of Criminal Procedure the importance of the provisions of section 198 or section 199 of the Code is emphasised. Clause (3) of this section specifically stated that the provisions of this section do not authorise the conviction of an offence referred to in section 198 or 199 when no complaint has been made as required by these sections. The Presidency Magistrate wrongly framed the charge, as on the record, when in respect of the offence charged there was no complaint filed and the facts as stated in the complaint actually filed did not make out the offence as charged."

E. B. Ghaswala, for Appellant.
C.B. Aggarwala, for Respondent No. 1.
H. J. Umrigar, for State.
G. R.

Appeal allowed.

[SUPREME COURT.]

S. J. Imam and *K. Subbarao, JJ.*
15th September, 1959.

Chimanlal Premchand *v.* State of Bombay.
Cr. A. No. 200 of 1957.

Bombay Agricultural Produce Market Rules (1941), *rule* 65 (1)—*Scope—Dealing in cotton pressed into bales—If contravenes rule* 65.

Cotton, ginned or unginned, continues to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost the fact that it is pressed into bales or packed otherwise does not make it any the less cotton specified in the Schedule to the Act. In this view, the pressed cotton in bales is an agricultural produce as defined in section 2 (1) of the Act, and, threfore, the appellant in doing business in the said produce without licence has contravened rule 65 of the Bombay Agricultural Produce Market Rules.

Purshotam Tricumdas, for Appellant.
H. J. Umrigar, for Respondent.
G.R.

Appeal dismissed.

[SUPREME COURT.]

S. R. Das, C.J., M. Hidayatullah and *K. C. Das Gupta, JJ.*
25th September, 1959.

Satyanarayana Laxminarayan Hegde *v.* Mallikarajun Bhavanappa Tirumale.
C.A. No. 189 of 1955.

Constitution of India (1890), *Article* 227—*Writ of* certiorari—*Error apparent from the face of the record—Test—Civil Procedure Code (V of* 1908), *section* 115—*Applicability.*

" The Bombay Revenue Tribunal took the view that the plaintiff-respondent must fail in his application for possession because he had failed to terminate the tenancy by notice before taking proceedings for ejectment. Is the conclusion wrong and if so, is such error apparent on the face of the record? An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record."

However wider Article 227 of the Constitution may be than the provisions of section 115 of Civil Procedure Code, it is well-established that the High Court cannot in exercising its powers under Article 227 assume appellate powers to correct every mistake of law. If anything it may merely be an erroneous decision which, in the absence of any provision for appeal, cannot be corrected by the High Court in revision under section 115, Civil Procedure Code or under Article 227.

Prushotam Tricumdas and *N. Lal*, for Appellants.
A. V. Viswanatha Sastri and *M.S.K. Sastri*, for Respondent.
G.R.

Appeal allowed.

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, A. K. Sarkar, K. Subba Rao and *M. Hidayatullah, JJ.*
30th September, 1959.

Gurnej Singh *v.* Pratap Singh Kairon.
C.A. No. 324 of 1959.

Representation of the People Act (XLIII of 1951), *sections* 123(7) *and* 123 (8)—*Village Officers—Lambardar.*

The Court rejected the contention that Lambardar was both Revenue Officer and Village Accountant.

After scrutinizing the various provisions of the Punjab Land Revenue Act and the Rules *held* that there was a clear distinction between the village headman and a patwari and that Parliament had enacted section 123 (8) of the Representation of the People Act, 1951, with that distinction in view. Under this section it was observed as it originally stood, obtaining assistance from any person serving under the Government was a corrupt practice. But then came the amendment in 1956 and, when Parliament, with the knowledge of the clear distinction between the two categories of officers, expressly included the one within the definition of revenue officers and excluded the other village officers from it, it would be unreasonable to construe the clause in such a way as to include the village headmen in the category of village accountants.

N. C. Chatterjee, for Appellant.

G. S. Pathak, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J. and *K. Subba Rao.*
30th September, 1959.

K. L. Borkar *v.* Devrao Laxman Anande.
C.A. No. 455 of 1958.

Representation of the People Act (XLIII of 1951), *section* 101—*Scope.*

"The question of throwing away of votes, cannot arise in the absence of special pleadings that the particular voter had cast the vote with the knowledge that they were voting in favour of a disqualified person."

" The ballot papers not rejected under rule 57 were to be deemed as valid and counted as such. In the instant case, if the votes secured by the respondent are valid votes then the appellant had not secured majority of valid votes. As the appellant had produced no evidence before the tribunal in support of his allegation that the voters had cast their votes for the respondent with the full knowledge that they were voting for the disqualfied candidate the votes so cast could not be deemed to have been thrown away within the meaning of the Act."

N. Lall, for Appellant.

Nemo, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, A.K. Sarkar and *M. Hidayatullah, JJ.*
6th October, 1959.

Romesh Chand Arora *v.* State.
Cr.A. No. 70 of 1957.

Criminal Procedure Code (V of 1898), *section* 526—*Scope—Powers of the High Court to transfer a case to itself.*

"In exercising its revisional powers a High Court upon having the records of a criminal proceeding brought to its notice on an appeal from the conviction can call upon the appellant to show cause why the sentence should not be enhanced, and having heard and dismissed the appeal, can forthwith enhance the sentence under its revisional power.

The High Court had not acted illegally in transferring the case to its file or in enhancing the sentence after hearing the accused.

A departure from the usual practice of allowing the appeal to be decided by the Court of Sessions before exercising revisional powers should not be encouraged."

Y. Kumar, for Appellant.

R. H. Debhar, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT]

B. P. Sinha, P. B. Gajendragadkar and *K. Subba Rao.* 14*th October,* 1959.

Indian General Navigation & Rly. Co., Ltd. *v.* Their Workmen. C.A. No. 86 of 1958.

Industrial Disputes Act (*XIV of* 1947)—*Illegal strike cannot be justified.*

"It is a little difficult to understand how a strike in respect of a public utility service which is clearly illegal, could at the same time be characterized as perfectly justified. These two conclusions cannot in law co-exist.

The tendency to condone what has been declared to be illegal by statute must be deprecated and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence."

M. C. Settalvad (Attorney-General of India), for Appellant.

Hiharundu Dutt Mazumdar, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and *K. N. Wanchoo, JJ.* 16*th October,* 1959.

Indian Bank Ltd. & others *v.* Its Workmen. C.A. Nos. 63 and 64 of 1957 and C.A. No. 90 of 1958 and C.A. No. 169 of 1958.

Industrial Disputes Act (*XIV of* 1947), *section* 25-*F*—*Gratuity.*

The principal question in the three appeals was whether a scheme of gratuity can be framed by Industrial Tribunals for workmen who are entitled to the benefits of section 25-F of the Industrial Disputes Act. The question was also raised in the form whether workmen were entitled to the double benefit of a gratuity as well as compensation on retrenchment.

In dealing with this question it is important to bear in mind the true character of gratuity as distinguished from retrenchment compensation. Gratuity is a kind of retirement benefit like the provident fund or pension. On the other hand retrenchment compensation is not a retirement benefit at all. As the expression retrenchment compensation indicates it is compensation paid to workman on his retirement

and it is intended to give him some relief and to soften the rigour of hardship which retrenchment inevitably causes. It was impossible to say that the grant of any one kind of benefit under law or otherwise excludes the claim for the grant of any other benefit.

M. S. K. Shastri, for Appellants in C.A. Nos. 63 and 64 of 1957.

C. K. Daphtary, Solicitor-General of India, for Appellants in C.A. Nos. 90 and 169 of 1958.

S. Gupta and *M. K. Ramamurti*, for Respondents in C.A. Nos. 63 and 64 of 1957.

Y. Kumar, for Respondent in C.A. No. 90 of 1958.

Phacke, for Respondent in C. A. No. 169 of 1958.

G.R.

Appeals dismissed.

[SUPREME COURT.]

B. P. Sinha, P.B. Gajendragadkar and *K. N. Wanchoo, JJ.*
16th October, 1959.

Brahmachari Research Institute *v.* Its Workmen.
C.A. No. 4 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 25-*F—Scope.*

Where the employer had paid compensation on retrenchment the workmen were not entitled to anything further under the award.

B. Sen, for Appellants.

Sukumar Ghosh, for Respondents.

G.R.

Appeal allowed.

[SUPREME COURT.]

B. P. Sinha, P. B. Gajendragadkar and *K. N. Wanchoo, JJ.*
16th October, 1959.

Dunlops *v.* Its Workmen.
C.A. Nos. 159 and 160 of 1959.

Industrial Disputes Act (XIV of 1947)—*All India Concern—Uniform Scheme.*

It would be advisable to have uniform conditions of service in an all India concern, but industrial adjudication in this country is based on what is known as the industry-cum-region basis and cases may arise where it may be necessary in following this principle to make changes even where the conditions of service of an All India Concern are uniform. If the Tribunal felt that the conditions of service were unfair it would be its duty to alter them irrespective of the fact that the demand is made by only a small minority of the workmen employed in one place out of the many in places where the concern carries on business.

N. Palkhiwala, for Appellant.

K. L. Hathi, for Respondents.

G.R.

Appeal dismissed.

Rajagopalan and *Ramachandra Ayyar, JJ.*
5th August, 1959.

Mohd. Abdul Khader *v.*
Muthia Chettiar.
Appeal No. 387 of 1955.

Words and Phrases—' Advance '—If and when a loan.

Interpretation of Deeds—Legal maxim—' Expressio unis est exclusio alterius *'—Applicability—Advance—If loan.*

An ' advance ' means literally a payment before hand. In certain cases it may be a loan but not necessarily so. Where an advance is declared to be re-payable though only conditionally, it would lean to the side of a loan.

In interpreting deeds the applicability of the maxim *expressio unis est exclusio alterius* is not an absolute one and its application depends on the intention of the parties as discoverable upon the face of the instrument. The maxim ought not to be applied when its application, having regard to the subject-matter to which it is sought to be applied, would lead to inconsistency or injustice.

Where a certain sum of money was advanced by one party to another under an agreement that the same should be recouped in a certain manner, *viz.*, by the distribution of a film for a specific perid, and it is also clear that the advance is to be repaid in any event it cannot be contended that if the proceeds of the film distribution was not sufficient to recoup the advance the same could not be recovered otherwise from the party liable. The clause relating to recoupment by the distribution of the film provides only an additional right of lien or set off and cannot be held to exclude the obligation to repay the advance or such portion of it as remained unpaid after the period of contract is over.

R. Ramamurthy Ayyar and *A. R. Krishnaswami*, for Appellant.

K. Rajah Ayyar and *K. S. Ramamurthi*, for Respondent.

R.M. *Appeal allowed.*

Basheer Ahmad Sayeed and *Ramaswami, JJ.*
4th September, 1959.

The State of Madras *v.*
Kamaksha Pillai.
S.A. No. 633 of 1957.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 3 (*b*)*—Scope of—Notification and acquisition of estate—Effect of—Rights of fishery enjoyed in tank in poramboke situated in estate from a long time—If vest in Government—Right of persons enjoying such rights to declaration from Civil Court—Appropriate remedy—Madras Land Encroachment Act (III of* 1905)*—Applicability.*

The provisions of section 3 (*b*) of Madras Act (XXVI of 1948) are specific, unqualified and unreserved, namely, that the entire estate including poromboke, tanks, fisheries, shall stand transferred to the Government and vest in the Government. There is no provision in the Act which enables persons who had been enjoying rights of fishery for a long time in a tank in a poramboke, situate in an estate notified and taken over under the Act, to apply for a patta for the fishery rights, and they cannot get any benefit by way of compensation or otherwise, when the rights claimed are not the creation of the landholder. Nor has the Madras Land Encroachment Act (III of 1905) any application whatever, so as to entitle the claimants to a declaration of such rights by a civil Court. The only possible remedy is a petition to the Board of Revenue under the Board's Standing Orders, the tract having became ryotwari after the acquisition under Act XXVI of 1948.

Section 2 of the Madras Land Encroachment Act declares, subject to the saving clause, that the Government is the owner of certain kinds of properties, which are defined as those which are not the property of anyone else and which are enumerated in the section. The saving clause declares that the Act does not affect pre-existing rights therein and does not supersede the rights of riparian owners. It is not a vesting declaration but only a property declaration with reference to unappropriated properties existing in 1905 and the declaratory Act exhausts itself with this declaration. Any subsequent acquisitions or extinctions of rights would not be under the Act but would be under other statutes and the Common Law of the land.

I.L.R. 37 Mad. 364 : I.L.R. 23 M.L.J. 109 ; I.L.R. 40 Mad. 886 : 33 M.L.J. 154 : L.R. 44 I.A. 166 (P.C.) ; I.L.R. 41 Mad. 840 : 35 M.L.J. 159 (F.B.) ; I.L.R. 42 Mad. 239 ; I.L.R. 49 Mad. 249 : 50 M.L.J. 391 : L.R. 53 I.A. 64 (P.C.) ; 33 M.L.J. 415 ; (1938) 2 M.L.J. 434 ; A.I.R 1937 Mad. 292, relied on.

What vests in the Government under section 3 of Madras Act XXVI of 1948 is the entire estate and the entire estate would certainly comprise the tank and the right to fish in the tank, which is immoveable property.

(1955) 2 S.C.R. 907 : 1956 S.C.J. 89 : (1956) 1 M.L.J. (S.C.) 63 : (1956) An.W.R. (S.C.) 63 ; (1955) 1 M.L.J. 264 ; (1957) 2 M.L.J. 244 ; (1959) 1 M.L.J. 185 ; (1959) 1 M.L.J. 195 ; (1958) 1 An.W.R. 420 referred.

Fisheries are in their nature mere profits of the soil over which the water flows and the title to a fishery arises from the right to the soil, though, in certain circumstances, in regard to private fisheries, the fishery may be severed from the soil. Even in such a case, the rights of fishery, which are customary rights would vest in the Government under section 3 (*b*) of Act XXVI of 1948.

Case-law reviewed.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Government Pleader (*K. Veeraswami*) for Appellant.

G. R. Jagadisan, for Respondents.

P.R.N. *Appeal allowed ; decree reversed.*

Balakrishna Ayyar, J.
10th August, 1959.

The Hindu *v.* Labour Court, Madras.
W.P. Nos. 892 and 893 of 1958.

Industrial Employment Standing Orders Act (XX of 1946), *Schedule—Model Standing Orders under—Standing Order No.* 13—*Termination of employment—What amounts to.*

'Termination of employment,' as distinguished from 'termination of service', of a workman may be brought about in various ways such as death or incapacity of the workman, bankruptcy or closure of the establishment, abandonment of service by the workman and so on. It may be open to the parties concerned to include in the Standing Orders matters which are outside the Schedule to the Industrial Employment (Standing Orders) Act. This Schedule insists on a provision being made in respect of matters enumerated therein. The term 'termination of employment' in Clause 13 of the Model Standing Orders is different from 'termination of service' and would include cases of retirement on attaining the age of superannuation. It is open to the Certifying Officer or the Labour Court on appeal to go into the question of the reasonableness of any provision as to retirement in any Standing Orders as it would be a matter within the scope of the Schedule to the Act and the Model Standing Orders. In considering whether the age of retirement or superannuation should be raised the liability of the employer to meet the additional commitments that would be involved is a relevant factor.

R. Ramamurthi Ayyar and *K. Soundararajan*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *R. Gopalan* and *B. R. Dolia*, for Respondents.

R.M. —— *Orders accordingly.*

Balakrishna Ayyar, J.
11th August, 1959.

Venkatarama Iyer *v.*
Panchayat of Kadayanallur Village.
W.P. No. 192 of 1959.

Madras Village Panchayats Act (X of 1950), *section* 25 (3)—*Applicability.*

Sub-section (3) of section 25 of the Madras Village Panchayats Act which enables the election authority to appoint a President, could apply only when in a panchayat which is existing and functioning a situation arises in which both the President and the Vice-President of the Panchayat have ceased to be able to function. It cannot apply to a case where a panchayat is yet to be constituted.

(1957) 2 An.W.R. 176, referred.

An Election Authority has no jurisdiction to evolve its own procedure or substitute its discretion for the Rules which the Goverment have got to frame.

S. Mohan Kumaramangalam, K. Hariharan and *K. Subramaniam*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) *K. Veeraswami* and *G. Ramanujan* and *T. R. Mani*, for Respondents.

R.M. —— *Petition allowed.*

Rajagopalan, J.
14th August. 1959.

Nazarath Sayed Etc. Trust *v.* Ibrahim Sahib.
C.R.P. No. 1362 of 1957.

Madras City Tenants' Protection Act (III of 1922), *section* 10—*Applicability.*

Section 10 of the Madras City Tenants' Protection Act will apply even to cases of composite decrees which provide not only for ejectment but for other terms and conditions of the lease itself and where the provision as to ejectment is provided for only at a future date.

S. Kothandarama Nainar, for Petitioner.

G. R. Jagadisan, for Respondent.

R.M. *Petition dismissed.*

Somasundaram, J. Thavasiyanan Servai *v.* Alagiriswami Chettiar.
21st August, 1959. S.A. No. 1037 of 1957.

Madras Agriculturists' Relief Act (*IV of* 1938), *section* 9-*A—Applicability to anomalous mortgages.*

Obiter :—The omission of the term "usufructuary mortgage" in section 9-A of the Madras Agriculturists' Relief Act, 1938, by the amendment in 1950, should mean that the section will apply to anomalous mortgages as well where possession of the property is given to the mortgagee and not only to usufructuary mortgages in the strict sense.

(1956) 2 M.L.J. 46, doubted.

K. S. Champakesa Ayyangar and *K. C. Srinivasan,* for Appellant.

A. Sundaram Ayyar and *P. Balasubramaniam,* for Respondent.

R.M. *Appeal dismissed. Leave granted.*

Balakrishna Ayyar, J. Anantharaman *v.* State of Madras.
25th August, 1959. W.P. No. 126 of 1959.

Fundamental Rules, rule 54—*Enquiry against Govrnment servant dropped—If amounts to full exoneration—Right to pay and allowances, etc.—Rule as to.*

The words "fully exonerated' in sub-rule (2) of rule 54 of the Fundamental Rules is used in the sense that the Government servant concerned has been found to have no blame whatsoever attached to him. It is only in such cases that he can avail himself of the benefit of sub-rule (4) and claim that the period of absence from duty should be treated as period of duty for all purposes. Every other case, such as cases where the Government servant concerned is given the benefit of the doubt or where though acquitted, some suspicion attaches to him, falling under sub-rule (3) of the said Rule he can get his pay and allowances only under sub-rule (5). In other words, where an officer is honourably acquitted he would get the benefit of sub-rules (2) and (4) of rule 54 and in all other cases sub-rules (3) and (5) of the Rule will apply.

K. Parasaran, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Petition dismissed.*

Rajagopalan and Ramachandra Ayyar, JJ. Kuppanna Gounder *v.* Perumal Gounder.
26th August, 1959. Appeals Nos. 286 and 376 of 1955.

Hindu Law—Surrender by widow—Validity of—Tests.

It is now well-settled that a surrender by a Hindu widow of her estate in order to be valid as such should be a *bona fide* one of the entirety of the estate in favour of the nearest reversioner or body of reversioners. Where a surrender is followed by a gift to the widow's nominee it is possible to conceive of three classes of cases, *viz.*, (*a*) where the surrender and the subsequent gift are independent transactions ; (*b*) where the surrender and the gift are parts of the same transaction and the reversioner making a gift of a portion of the estate surrendered in favour of a nominee of the widow; and (*c*) where the surrender and the gift are parts of the same transaction, but the gift is of such a small or reasonable portion of the estate surrendered and the gift itself is to a temple or charity or a relation of the family.

Whether an arrangement under which a portion of the property surrendered is given to a person who is not a stranger to the family at the instance of a widow, would be held to be a device to divide the estate between the reversioner and the widow's nominee, cannot be decided on the basis of the relationship which the nominee of the widow bears to the family of the reversioners. The real test will be whether the surrender is of the entire estate or whether under the guise of a surrender a portion of

the property is diverted from the reversioners to a person who is not a reversioner and an element of transfer would be involved in the transaction, in which case it could not be a valid surrender.

A.I.R. 1955 Andhra Pra. 232, followed.

(1953) 1 M.L.J. 167, observations held too wide.

(Case-law reviewed and discussed-principles stated).

Appeal No. 286 *of* 1955.

The Advocate-General (*V. K. Tiruvenkatachari*) and *G. R. Jagadisan*, for Appelants.

T. M. Krishnaswami Ayyar, A. Balasubramaniam, S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondents.

Appeal No. 376 *of* 1955.

S. Mohan Kumaramangalam and *S. Gopalaratnam*, for Appellants.

A. Balasubramanyam, for Respondents.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J.
1*st Septembr*, 1959.

Standard Vaccuum Oil Co., Madras *v.* Commissioner of Labour, Madras.
W.P. Nos. 521 and 573 of 1959.

Madras Shops and Establishments Act (*XXXV of* 1947), *sections* 41 *and* 51—*Jurisdiction of Commissioner under —Scope of—Persons protected under the Act.*

The Madras Shops and Establishments Act applies to all classes of persons employed except those who are expressly excluded from its scope under section 4 (1) of the Act, whether the persons employed receive 'wages' or 'salaries' for the services.

Section 4 (1) (*a*) of the Act excludes persons in a position of management from the scope of the Act. But what constitutes position of management is not explained in the Act. In order to be in a position of management it is not necessary that the person should be at the top of the hierarchy or that he should have absolute powers or that he should be in sole charge of a territory or branch or department or that he should have a right to lay down policies. Powers of appointment or dismissal of other employees or the power to grant leave, etc., are not also conclusive. If an individual has officers subordinate to him, whose work he has to supervise and who has to take decisions and also the responsibility for ensuring that matters entrusted to his charge are efficiently conducted in any ascertainable area or section of work assigned to him, he will be in the position of management.

Whether a person is in a position of management or not is mostly a question of fact and the Tribunals under the Act have jurisdiction to deicide that question so long as the person concerned is a person employed entitled to the protection of the Act. Section 51 of the Act vests the jurisdiction in the Commissioner to decide the question whether any of the provisions of the Act would apply to a person employed in any establishment. Unless there is a manifest error apparent on the face of the record the decision of the Commissioner cannot be interfered with by the High Court under Article 226 of the Constitution merely because the High Court is inclined to take a viw different from that of the Commissioner.

S. Govind Swaminathan and *S. S. Sivaprakasa*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) and *K. K. Venugopal*, for Respondent.

R.M. ——— *Petition dismissed.*

Balakrishna Ayyar, J.
1st September, 1959.

Sanadanaswami *v.* Ponnuswami.
W.P. No. 994 of 1956.

Industrial Disputes Act (XIV of 1947), *section* 33-*A—Scope of.*

Section 33-A of the Industrial Disputes Act does not prohibit every alteration in the conditions of service of a workman during the pendency of proceedings before a Labour Court or Tribunal. What is prohibited is the alteration of the conditions of service in regard to any matter connected with the dispute. Thus there must be some point of connection between the pending dispute and the act of the employer in respect of which a complaint may be made under section 33-A. Where the question referred to the Labour Court was a general one regarding the level of wages in a particular class of industry, retrenchment of individual worker in any particular establishment engaged in such industry, during the pendency of such a reference cannot amount to a contravention of section 33-A of the Act and the Labour Court could not get any jurisdiction under it.

T. S. Kuppuswami Ayyar, for Petitioner.

R. Sundaralingam, for Respondent.

R.M. *Order quashed.*

Rajagopala Ayyangar, J.
2nd September, 1959.

Panchapakesa Iyer *v.* Subramania Moopan.
W.P. No. 57 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 4 (1) *and* (2)—*Applicability.*

Restoration to possession of a cultivating tenant under section 4 (1) of the Madras Cultivating Tenants' Protection Act will be barred only if such restoration is not possible as a result of another tenant being in *bona fide* possession of the land and who does not fall within the terms of the proviso. Where some other tenant enters into possession of the land but surrenders possession and clears out before the application by the former tenant for restoration to possession there is no bar to an application under section 4 (1) of the Act.

A. V. Narayanaswami Ayyar and *R. Venkatachalam,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Petition dismissed.*

Rajamannar, C.J. and Ganapathia Pillai, J.
4th September, 1959.

Thalai Vadivu *v.*
Venugopala Chettiar.
L.P.A. No. 38 of 1955.

Madras Buildings (Lease and Rent Control) Act (XXVI of 1957), *section* 7—*Applicability to decrees in ejectment made before the Act.*

It is not correct to say that section 7 of the Madras Buildings (Lease and Rent Control) Act would apply only to cases of decrees in ejectment passed after the coming into force of the Act. The section prohibits eviction of tenants in execution of decrees whether the same is made before or after the Act and whether the decree is based on a compromise or after contest. Where an execution petition is filed after the coming into force of the Act the tenant could invoke the protection under section 7.

A. V. Narayanaswami Ayyar, S. Amudachari and *A. V. Raghavan,* for Appellant.

T. R. Srinivasan, for Respondent.

R.M. *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam, J. L. Kapur, A. K. Sarkar and K. N. Wanchoo, JJ.
27th October, 1959.

N. R. Ghosh *v.* State of W.B.
Crl. A. No. 116 of 1957.

Criminal Procedure Code (V of 1898), *section* 403—*West Bengal Criminal Law (Amendment) Act,* 1949, *section* 4—*Constritutional validity.*

By Majority : Held that it was within the power of the High Court to review its judgment in earlier cases. It was further held that in view of its previous judgment upholding the validity of the Criminal Law (Amendment) Act the trial of the appellant by the Special Judge was by a competent Court. The order of acquittal in favour of the appellant was a proper order and was a bar to his re-trial.

Sukumar Ghosh, for Appellant.

H. R. Khana, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
28th October, 1959.

Satwant Singh *v.* The State of Punjab.
Crl.A. Nos. 100-105 and 124-129 of 1954 and Petition No. 31 of 1952.

Criminal Procedure Code (V of 1898), *section* 197—*Applicability—Penal Code (XLV of* 1860), *section* 420—*Ordinary fine, compulsory fine—Sentence.*

Section 197 of Criminal Procedure Code did not apply to the facts of the case as the offence of abetment of cheating by the accused could not be regarded as an offence committed by him while acting or purporting to act in the discharge of his official duty.

" The measure of punishment must be commensurate with the nature and the seriousness of the crime. The appellant had cheated the Government of Burma to the extent of something like Rs. 7 lakhs. It is impossible to say that the sentence of imprisonment as reduced by the High Court was in any way excessive."

Harnam Singh, for Respondent

C. K. Daphtary, Solicitor-General of India, for Appellant.

G.R. *Satwant Singh's appeal and Petitions dismissed and appeals by State of Punjab allowed.*

Ananthanarayanan, J.
20th August, 1959.

Muniammal *v.* Pagadala Guryvayya.
A.A.O. No. 142 of 1958.

Practice—Appointment of Receiver in a simple mortgage suit—When could be done.

Mortgages—Suit by a simple mortgagee—Receiver—If could be appointed to collect rents of the mortgaged properties.

Civil Procedure Code (V of 1908), *Order* 40, *rule* 1—*Appointment of Receiver—Considerations in case of suit of simple mortgagee.*

In a suit by a simple mortgagee a Court has jurisdiction to order the appointment of a Receiver for collecting the rents and profits of the property subject to the simple mortgage, provided proper cause is shown and the relevant circumstances justify the appointment of a Receiver.

56 Mad. 915, followed.

A.I.R. 1947 All. 157, differed.

T. Venkatadri and *T. R. Ramachandran*, for Appellant.

K. Sanjeevi Naidu, *K. Kumaraswami* and *N. R. Raghavachari*, for Respondent.

R.M. *Appeal allowed.*

Rajagopalan and Ramachandra Ayyar, JJ. State of Madras *v.* Asher Textiles, Ltd.*
18th September, 1959. T.R.C. Nos. 183 and 184 of 1956.

Madras General Sales Tax Act (*IX of* 1939), *section* 12-*B—Revisional jurisdiction of the High Court under—Scope and extent of.*

The rule of law that the powers of an appellate Court is co-extensive with those of the original Court is not purely based on statutory provisions. It is an inherent jurisdiction in the appellate Court and subject to any limitation that may be imposed by any statute an appellate Court has jurisdiction to take note of the subsequent change in law after the original Court's decision and mould the relief in accordance therewith. A Court of revision would likewise have all the powers of an appellate Court except that the conditions of interference will be in accordance with the relevant statutory provisions creating the revisional jurisdiction.

The revisional jurisdiction granted under section 12-B of the Madras General Sales Tax Act is wider than the revisional jurisdiction under the Code of Civil Procedure and the High Court has jurisdiction to rectify any error of law in the order of the Appellate Tribunal having regard to the state of law at the time of the disposal of the revision.

The Government Pleader (*K. Veeraswami*), for Petitioner.

K. Rajah Ayyar and *T. V. Balakrishnan*, for Respondent.

R.M. *Petition allowed.*

Somasundaram, J. Public Prosecutor *v.* Narayanaswami.
18th September, 1959. Crl. Appeals Nos. 44 and 45 of 1959.

Madras Village Panchayats Act (*X of* 1950), *sections* 2 (7), 25 (3) *and* 103—'*Executive Authority*'—*If includes a temporary President.*

A temporary President of a panchayat appointed under section 25 (3) of the Madras Village Panchayats Act is as much a 'President of the Panchayat' within the meaning of the Act and as such he is competent to file a complaint under section 103 of the Act.

The Public Prosecutor (*P. S. Kailasam*), for Appellant.

K. Narayanaswami Mudaliar, *R. Rajagopalan* and *T. Ramaswami*, for Respondent.

R.M. *Appeal allowed.*

Ramaswami, J. Naidu, *In re.*
24th September, 1959. Crl.R.C. Nos. 1155 and 1156 of 1958.

Motor Vehicles Act (IV of 1939), *section* 42 (1)—*Offence under—When committed—Use or permit the use of any vehicle—If includes mere driving of such vehicle.*

The expression 'use or permit the use of the vehicle' in sub-section (1) of section 42 of the Motor Vehicles Act is not the same thing as driving or being in charge of the vehicle. The scheme of the Act makes a distinction between the user of a motor vehicle and the ' driving ' of such a vehicle each of which act is made punishable for certain purposes. In order to constitute a breach of section 42 (1) of the Act, the vehicle, whether stationary or moving, should be found in the course of its user for the purpose for which it is intended at a place which is not authorised by the permit.

The mere fact that a goods vehicle is found going empty in a route not covered by its permit will not be a breach of section 42 (1) of the Act unless it is proved that it was going by that unauthorised route in the course of its user as a goods transport vehicle.

T. Chengalvarayan, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. *Petition allowed.*

Rajamannar, C.J., and Ganapatia Pillai, J. Chinniah Servai *v.* State of Madras.
1st October, 1959. W.P. No. 929 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 13—*Power of exemption under—Scope of.*

Section 13 of the Madras Buildings (Lease and Rent Control) Act does not specify the grounds on which an exemption may be granted by the Government. But it is only when the provisions of the Act do not cover a particular case that there is legitimate scope for the exercise by the Government of the powers conferred by section 13.

There is no provision in the Act under which the owner of a non-residential building could apply for eviction of a tenant of such a building on the ground that he *bona fide* requires it for his residential purpose. Apart from cases of non-residential buildings such as factories, large establishments, etc., which could not be normally considered fit for residential purposes, there may be buildings which may be called non-residential because they were let for non-residential purposes but which could be used for residential purposes as well. There is no provision in the Act under which non-residential buildings of this type could be converted into a residential building, though there is a provision under section 11 (1) of the Act for converting a residential building into a non-residential one. Hence where the justice of any case could not be met by the provisions of the Act there is legitimate scope for the exercise by the Government of the powers conferred under section 13 of the Act.

Case-law reviewed.

R. Gopalaswami Ayyangar and *R. Mathurubutham,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *T. Venkatadri* and *V. M. Jayapandian,* for Respondent.

R.M. *Petition dismissed.*

Ramaswami and Ananthanarayanan, JJ.
13th October, 1959.

Workers, etc., of Express News Papers (Private) Ltd. *v.* Management of Express News Papers (Private) Ltd.
W.A. Nos. 73 and 85 of 1959.

Constitution of India (1950), *Article* 226—*Jurisdiction of Court under—Writ of Prohibition against a Tribunal even at the earliest stage—When could be issued.*

Industrial Disputes Act (*XIV of* 1947), *section* 10 (1) *and* (3)—*Reference under—Jurisdiction of Tribunal to decide whether what is referred is an industrial dispute—Exercise of power under sub-section* (3) *of section* 10—*When justified.*

It is no doubt true that the High Court has jurisdiction under Article 226 of the Constitution of India to issue a writ of prohibition against a Tribunal subordinate to it even at the earliest stage, *viz.*, even before the Tribunal assumes jurisdiction to inquire into any matter, provided it is satisfied that the absence of jurisdiction in the Tribunal is so patent that it would be an abuse of power or injustice to permit the Tribunal to proceed in the matter. It would not however be proper for the Court to substitute itself for the Tribunal and embark upon an elaborate enquiry into controverted question of fact at the earliest stage.

In a reference under section 10 of the Industrial Disputes Act the Tribunal has jurisdiction to decide whether a particular matter referred to it amounts to an industrial dispute or not. Where there is a dispute as to whether the conduct of the employer is a 'closure' or 'lock-out' it is for the Tribunal to decide the question on the evidence before it. So long as there are conceivable possibilities that the act may be a lock-out, though it appears to be a closure, it must be a matter for evidence in an inquiry before the Tribunal. It is no doubt true that an employer has a right to close down his business and his motives in doing so cannot be questioned. Both the closure and the motives actuating it are outside the purview of the Industrial Disputes Act. But the mere fact that an employer chooses to call his action as a closure is not conclusive and it is for the Tribunal to decide whether what is claimed as a closure is a real and *bona fide* closure or is merely reprisal lock-out. But where the very fact of lock-out is in dispute and the employer claims to have closed down his business the use of the power under section 10 (3) of the Act by the Government will be erroneous and improper as it would virtually amount to a coercion of the employer to continue his business. Such powers can be used only in cases where both sides agree that a lock-out has occurred as a result of a strike and each party contends that its action is legal and justified.

K. V. Sankaran, for Appellant.

V. Tyagarajan and *M. R. Narayanaswami* and The Additiona Government Pleader (*M. M. Ismail*), for Respondents.

R.M. *Orders accordingly.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and J. C. Shah, JJ.
28th October, 1959.

Union of India *v.* Amar Singh.
C.A. No. 478 of 1957.

Railways Act (IX of 1890), sections 72 and 80—Goods despatched from Pakistan—Bailee of the goods—Article 30 of the Limitation Act (IX of 1908)—Onus.

In the absence of any contract between the two Governments or the Railways, the legal basis on which the conduct of the respondent and the Railways can be sustained is that the respondent delivered the goods to the receiving Railway with an authority to create the Forwarding Railway as his immediate bailee from the point the wagon was put on its rails. The authority in the agent must necessarily be implied to appoint the Forwarding Railway to act for the consignor during that part of the journey of the goods by the Indian Railway ; and if so, by force of that section, the Forwarding Railway would be agent of the consignor.

The burden is upon the defendant who seeks to non-suit the plaintiff on the ground of limitation to establish that the loss occurred beyond one year from the date of the suit.

Cases referred: I.L.R. 3 Mad. 240 ; I.L.R. 5 Bom. 371 ; 7 H.L.C. 194.

Ganpathi Iyer, for Appellant.

Gurbachan Singh, for Respondent.

G. R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and J. C. Shah, JJ.
4th November, 1959.

Bhaskar Waman Joshi *v.* N. R. Aggarwal.
C.A. No. 16 of 1955.

Transfer of Property Act (IV of 1882), section 58 (c), Proviso—Scope.

The Proviso to section 58 (*c*) of the Transfer of Property Act was added by Act XX of 1929. Prior to the amendment there was a conflict of decisions on the question whether the condition contained in a separate deed could be taken into account in ascertaining whether a mortgage was intended by the principal deed. The Legislature resolved this conflict by enacting that a transaction shall not be deemed to be a mortgage unless the condition referred to in the clause is embodied in the document which effects or purports to effect the sale. But it does not follow that if the condition is incoporated in the deed effecting or purporting to effect a sale a mortgage transaction must of necessity have been intended. The question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The circumstance that the condition is incorporated in the sale-deed must undoubtedly be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction.

The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts. Oral evidence of intention is not admissible in interpreting the covenants of the deed but evidence to explain or even to contradict the recitals as distinguished from the terms of the documents may of course be given. Evidence of contemporaneous conduct is always admissible as a surrounding circumstance ; but evidence as to subsequent conduct of the parties is inadmissible. L.R. 51 I.A. 305 : 47 M.L.J. 409, referred to

Dr. W. Barlingay, for Appellant.

A. V. Viswanatha Shastri, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
6th November, 1959.

Y. Mahboob Sheriff *v.* Mysore State Transport Authority.
Petitions Nos. 54, 75 and 76 of 1959.

Motor Vehicles Act (IV of 1939), *section* 58 (1) *and* (2)—*Article* 19 (1) (g) *of the Constitution of India—Applicability.*

By Majority.—" One of the incidents which applies to a permit is that the Authority is enjoined by section 58 (1) (*A*) of the Motor Vehicles Act to indicate a period of not less than three years and not more than five years in the permit, so far as its duration is concerned. The same provisions applied to a renewal also under section 58 (2) of the Act."

[The Judgment also directed the Regional Transport Authority, Bangalore, to comply with the requirements of the law as laid down in section 58 (1) (*A*), read with section 58 (2) of the Act, in the order of renewal made by it in favour of petitioners on December 15, 1958.]

J. L. Kapur, J., in his dissenting note, observed " No order commanding the Authority as to what order it should pass and what period should be substituted in place of the order passed by it can be made by this Court. All that this Court can do is to quash the order and leave it to the Authority to reconsider the matter and exercise its discretion keeping in view the law as laid down by this Court.

C. K. Daphtary, in all the petitions, for Petitioners.

H. N. Sanyal Additional Solicitor-General, for Respondent No. 3 in Petitions Nos. 54, 75 and 76.

G.R. — *Petitions allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
6th November, 1959.

Srinivasa Reddy *v.* State of Mysore.
Petition No. 95 of 1959.

Motor Vehicles Act (IV of 1939), *section* 68-*F—Applicability.*

By Majority.—Under section 68-F of the Motor Vehicles Act the undertaking has to apply for the permits in the manner provided in Chapter IV, even though the R.T.A. may be bound on such application to issue the permits. Thus the undertaking must comply with the terms of sections 45 and 46 when it applies for permits. Under section 57 (2) the undertaking should apply not less than six weeks before the date on which it desired to start the service. This is necessary to give time to the R.T.A. to deal with the matter and, if necessary, to inform those who might be affected under section 68-F (2) to be prepared for the change. That is why section 68-F (1) provided that the application shall be made in a manner provided in Chapter IV.

It is the duty of the undertaking when it prepares a scheme under section 68-C to decide whether it will take up a whole route or portion thereof. If it decides to take a portion of the route (provided, however, conditions of efficiency, adequacy, economy and proper co-ordination are fulfilled) it should specify that portion only in the scheme.

Dissenting from the majority decision *J. L. Kapur, J., held* that it was not the intention of the legislature to put the whole scheme into operation all at once or not at all. " If the State undertaking intends to run a scheme within a reasonable time then there is no reason why the State should not apply for different routes within a reasonable time so long as it acts honestly, fairly and without oblique motives."

C. K. Daphtary, Solicitor-General of India, for Petitioners.

H. N. Sanyal, Additional Solicitor-General of India, for Respondents Nos. 1 and 2.

G.R. — *Order accordingly.*

[Supreme Court.]

P. B. Gajendragadkar, K. Subba Rao and J. C. Shah, JJ. *10th November*, 1959.

J. K. Mukherjee *v.* New Beerbhum Coal Co., Ltd. C.A. No. 342 of 1959.

Civil Procedure Code (*V of* 1908), *Order* 21, *rules* 66 *and* 89—*Applicability—Sales by a receiver.*

" In the present appeal we do not propose to consider or decide the general question about the character of the sale held by the receiver nor do we propose to attempt to specify which provisions of Order 21 will apply to such sales and which will not. We are dealing with the narrow question as to whether Order 21, rule 89 applies to such a sale."

" If the provisions of rule 66 of Order 21 are inapplicable to sales held by receivers it is obvious that the second condition prescribed by rule 89 (1) (*b*) is equally inapplicable and it is undoubtedly one of the two essential conditions for the successful prosecution of an application under the said rule. In our opinion this fact clearly emphasises the inapplicability of the whole rule to sales held by receivers. We are, therefore, satisfied that the High Court was right in refusing to entertain the appellant's application under Order 21, rule 89".

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

S. N. Mukharjee, for Respondent No. 1.

N. C. Chatterjee, for Respondent No. 2.

G.R. ——— *Appeal dismissed.*

[Supreme Court]

P. B. Gajendragadkar, K. Subba Rao and J.C. Shah, JJ. *10th November*, 1959.

Official Liquidator *v.* Rameshwar Nath. C.A. No. 28 of 1958.

Companies Act (*I of* 1956)—*Priority claim by the landlord of the Bank in liquidation.*

In the winding up of the company it was open to the liquidator to disclaim contracts, and till so disclaimed or rescinded the contracts remained operative. Distinction was to be made between the property which remained with the Liquidator for the purposes of liquidation and the one which remained with the Liquidator because he abstained from trying to get rid of it.

The property did not remain with the Liquidators, but " they could not think of any suitable method of getting rid of the premises inspite of their desire to do so."

The debt so incurred was not a debt incurred in connection with expenses for liquidation and was just like any other debt and could not be given any priority.

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

A. V. Viswanatha Shastri, for Respondent.

G.R. ——— *Appeal allowed.*

[Supreme Court.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ. *10th November*, 1959.

Bharwad Mepa Dana *v.* State of Bombay. Cr. A.No. 72 of 1959.

Penal Code (*XLV of* 1860), *section* 302—*Unlawful assembly—Common object—Test.*

The Court observed that in the present case it had been found by the High Court that there were five or more people constituting the unlawful assembly and that they had a common object and intention to kill the deceased, who were done to death in pursuance of this common object. The Court held that on these findings the High Court was right in upholding the conviction and sentences of the accused.

J. G. Sethi, for Appellant.

H. J. Umrigar, for Respondent.

G.R. ——— *Appeal dismissed.*

Ganapatia Pillai, J.
5th September, 1959.

Janaki Ammal *v.* Krishnaswami Mudaliar.
C.R.P. No. 421 of 1959.

Civil Procedure Code (V of 1908), *section* 145 *and Schedule—Appendix G—Form* 3—*Security bond—Enforceability by execution.*

A security bond executed in favour of an officer of Court in the form mentioned in Form 3 of Appendix G of the Schedule to the Code of Civil Procedure is not executed in favour of a particular person either by designation or by name and is not as such assignable. Even if such a case does not come within section 145 of the Code the Court has ample jurisdiction in its inherent powers, to enforce such a bond by way of execution in the same proceedings to realise the money. There is no necessity to bring a separate suit to enforce the bond.

Vedantham Srinivasan, for Petitioner.

K. S. Champakesa Ayyangar and *K. C. Srinivasan,* for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J.
14th September, 1959.

Jeevabhoy Baghat *v.* Life Insurance Corporation of India.
C.R.P. No. 297 of 1959.

Civil Procedure Code (V of 1908), *Order* 6, *rule* 17—*Amendment of plaint*—Bona fides *of party—Relevancy.*

The question of amendment of a pleading has to be decided with reference to the provisions of Order 6, rule 17 of the Code of Civil Procedure and not by embarking on an inquiry whether the averments in the original pleadings are true or not. The question of *bona fides* of the party relates only to the amendment sought for, *viz.,* whether there has been any laches or prejudice to the other side and it has no bearing on the truth or falsity of the pleadings.

V. C. Gopalaratnam, V. S. Subramanian and *V. Tyagarajan,* for Petitioner.

R. Narasimhachari and *N. Varadarajan,* for Respondent.

R.M. ——— *Petition allowed.*

Subramanyam, J.
15th September, 1959.

Vazir Begum Ammal *v.* Seth Tholaram.
Appeal No. 147 of 1956.

Evidence Act (I of 1872), *section* 6—*Exception as to exclusion of hearsay evidence—Suit on a promissory note—Proof of signature of a Pardanashin lady—Husband's statement that the signature on the note is his wife's—If admissible in evidence.*

In a suit on a promissory note executed by a Pardanashin lady where it is established by evidence that the promissory note was taken by the husband of the lady inside the house and was brought back after obtaining the signature and the husband stated that the signature on the note was his wife's the statement so made is admissible in evidence to prove the signature of the lady on the promissory note.

P. S. Srisailam, for Appellant.

T. S. Raghavachari, S. Amudachari and *A. V. Raghavan,* for Respondent.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, J.
18th September, 1959.

Mohd. Kasi Moiddin Saheb *v.*
Mohambara Naicker.
C.C.C. A. No. 149 of 1955 and C.R.P.
No. 464 of 1959.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *sections* 6 *and* 6-*A—Cumulative effect of—Transfer of suits to Revenue Court—If could be done in case of composite suits—Order of transfer—If revisable by the High Court.*

Section 6 of the Madras Cultivating Tenants' Protection Act bars the jurisdiction of Civil Courts only in respect of any matter which a Revenue Court under the Act is empowered to determine. The jurisdiction of the Revenue Courts under the Act is limited only to cases for recovery of possession and the Revenue Court has no jurisdiction to pass a decree for arrears of rent, etc. Suits of a composite nature

involving reliefs not only as to possession but also other matters like recovery of arrears of rent, etc., could not properly be transferred by a civil Court under section 6-A of the Act. In such cases effect can be given both to section 6 and section 6-A of the Act by the civil Court first disposing of the issues that are outside the scope of the Revenue Court under the Act and then take up the question whether the defendant is a cultivating tenant or not within the meaning of the Act. If it finds that the defendant is a cultivating tenant then the suit should be transferred to the Revenue Court in relation to the relief as to possession or injunction alone. To justify a transfer under section 6-A of the Act there should be a decision by the Civil Court whether the defendant is a cultivating tenant or not and no transfer could be made on a *prima facie* or tentative view of the matter.

(1958) 1 M.L.J. 232 and (1958) 2 M.L.J. 184, differed.

(1957) 2 M.L.J. 628 and (1958) 1 M.L.J. 427, referred.

An order of transfer erroneously made under section 6-A of the Act could be set aside in revision by the High Court.

K. Rajah Ayyar and *T. K. Subramania Pillai*, for Appellant.

A. Nagarajan and *A. Viswanathan*, for Respondent.

R.M. ——— *Petition allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
23rd September, 1959.

State of Madras *v.*
India Coffee Board.
T.R.C. No. 39 of 1956.

Madras General Sales Tax Act (IX of 1939), *section* 12—*Powers of Deputy Commissioner to revise assessment—Scope and extent of—If exists even after orders of assessment are taken up on appeal and revision.*

The scheme and provisions of the Madras General Sales Tax Act, 1939, makes it clear that an order of assessment is treated as a single entity subject to a right of appeal conferred on the tax-payer and a limited right to the State to get errors in assessment revised by the competent authorities. Though the Statute envisages two sets of remedies *viz.*, appeals and revision, the former being available only to the assessee and latter both to the assessee and the State, the order of assessment itself is not treated as a severable one with respect to each item of the total turnover, *viz.*, the part objected to by the assessee or by the State. It is not correct to say that the Act provides two independent hierarchy of tribunals, one to exercise appellate jurisdiction and the other to exercise revisional jurisdiction in the interests of the Revenue, each functioning independent of the other in their respective fields with reference to the same order of assessment.

Hence the jurisdiction of the Deputy Commissioner under section 12 of the Act to revise an order of assessment ends when the Appellate Tribunal has passed an order in respect of that assessment in the exercise of its appellate jurisdiction. Apart from cases of escaped assessment for which separate provision is made under the rules, an order of assessment under the Act is a single and indivisible one capable of being set aside either by appeal or revision. Independent of any theory of merger when once an order of assessement has been the subject-matter of an appeal (even though the right of appeal is conferred only on the assessee and not the States) and the order has been superseded by the order of the Appellate Tribunal, the Deputy Commissioner has no jurisdiction thereafter to exercise his powers of revision under section 12 of the Act. It is all the more clear that such a power could not be exercised when the order of assessment has been the subject-matter of a final adjudication by the High Court in revision.

The Government Pleader (*K. Veeraswami*), for Petitioner.

M. Subbaraya Ayyar, V. Sethuraman and *S. Padmanabhan*, for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopala Ayyangar, J.
1st October, 1959.

Baluswami Naidu & Sons *v.* State of Madras.
W.P. Nos. 14, 15, etc., of 1958.

Madras General Sales Tax Act (IX of 1939), *sections* 3 (4), 19 (4)—*Validity of rules made under —Formalities to be observed.*

A rule made under the Madras General Sales Tax Act, 1939, prescribing the mode of determination of turnover under section 3 (4) of the Act should conform to the formalities prescribed under section 19 (4) of the Act and also receive the approval of the Legislative Assembly as required by the Proviso to section 3 (4) of the Act.

8 S.T.C. 272 and 9 S.T.C. 215, referred.

Any defect in the validity of the rule due to non-compliance with the formalities prescribed by the Act cannot be cured by the mere fact of publication in the official gazette and the provisions of section 7 of the General Clauses Act can be of no avail

Messrs. Sundararajan and Sivaswami, R. S. Venkatachari, T. T. Srinivasan and *A. N. Rangaswami,* for Petitioners.

The Advocate-General (*V.K. Tiruvenkatachari*) and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. ——— *Petition allowed.*

Balakrishna Ayyar, J.
23rd October, 1959.

Ponnuswami Gramani *v.* Dt. Collector of Chingleput.
W.P. No. 8 of 1959.

Madras General Sales Tax Act (IX of 1939), *section* 9—*Assessment of tax due by a dissolved partnership—Liability of the partners.*

It is no doubt true that unlike the Income-tax Act, the Madras General Sales Tax Act, 1939 or the rules framed thereunder do not contain a separate provision for assessing the turnover of a dissolved firm which was a dealer as defined by the Act till its dissolution. But on that score the liability of the partners of the dissolved firm to pay the tax due by the firm cannot be avoided. Such arrears could be recovered from the partners even independently of their being in possession of the assets of the dissolved firm.

V. Balasubramanian, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami and Ananthanarayanan, JJ.
9th November, 1959.

Express Newspapers, Ltd. *v.* Their Workers & Staff.
S.C.P. Nos. 155 and 156, etc., of 1959.

Constitution of India (1950), *Article* 133 (1) (b) *and* (c)—*Leave to appeal to Supreme Court—Applicability.*

It is no doubt true that even proceedings before the High Court under Article 226 of the Constitution could involve directly or indirectly a claim in respect of property of the monetary value laid down in Article 133 (1) (*b*) of the Constitution. In cases where such proceedings do not involve such a claim they may fall under clause (*c*) of the said Article. But before a Court can grant a certificate under clause (*c*) of Article 133 (1) it must be convinced that the case involves a question of general importance.

Where the High Court merely directed an Industrial Tribunal to inquire and decide the question whether a particular closing down of an industry amounts to a '*bona fide* closure' or a mere 'lock-out', there is no question of any general importance involved so as to merit a certificate for appeal to Supreme Court under Article 133 (1) (*c*) of the Constitution.

V. Tyagarajan and *M. R. Narayanaswami,* for Petitioner.

K. V. Sankaran and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. ——— *Petition dismissed.*

[SUPREME COURT].

B.P. Sinha, C.J., P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta and J.C. Shah, JJ.
13th November, 1959.

Okara Elec. Supply Co. *v.* State of Punjab.
Petition No. 19 of 1959.

Electricity Act (*IX of* 1910), *sections* 7 *and* 28—*Sanction—If can reserve power to acquire the business—Articles* 14, 19 *and* 31 *of the Constitution.*

In view of the nature of the undertaking it could not be said that Government when granting sanction could not reserve an option to acquire the business. In the present case clause 11 of the sanction reserving such right was not illegal and the order was not void and the action of the Government did not violate any fundamental right of the petitioner.

Veda Vyasa, Senior Advocate, (*S. K. Kapur* and *Ganpat Rai,* Advocates, with him), for the petitioner.

S. M. Sikri, Advocate-General, Punjab and *N. S. Bindra,* Senior Advocate, (*D. Gupta,* Assistant Government Advocate, with them) for the Respondents.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and J.C. Shah, JJ.
13th November, 1959.

Nachiappa Chettiar *v.* Subramaniam Chettiar.
C.A. Nos. 112-116 of 1955.

Arbitration Act (*X of* 1940), *section* 21—*Appeal pending against preliminary decree—Application for arbitration—If to be made to trial Court or appellate Court.*

Where the parties agree to refer in mortgage and similar suits the dispute between them to arbitration, after the preliminary but not after the final judgment and where the preliminary judgment is pending in an appeal in a higher Court, the question as to which Court the party should apply for arbitration was left to the choice of the parties to apply to either of the Courts and the Court to which the application has not been made would necessarily take notice of it and avoid any conflict.

A. V. Viswanatha Shastri, for the Appellant.

K. Raja Aiyar, for the Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B.P. Sinha, C.J., P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta and J.C. Shah, JJ.
20th November, 1959.

S. M. Banerji *v.* Sri Krishna Agarwal.
C.A. No. 301 of 1959.

Representation of People Act (*XLIII of* 1951), *sections* 9, 33, 36 *and* 100—*Amendment of petition after limitation.*

The ground raised in the amended petition was not covered by the averments in the first petition before the Tribunal. The Returning Officer had not accepted the nomination paper improperly in the present case as the want of qualification did not appear on the face of the nomination papers. An amendment introducing a new ground could not be allowed after the period of limitation for filing an Election Petition had expired. The proposed amendment to the petition introduced a new ground and the Tribunal had followed the correct principles in rejecting it. The High Court was in error in interfering with the decision of Tribunal on this point after the entire petition was disposed of and its decision must accordingly be set aside. Case remanded to the High Court to be decided according to law, keeping in view the decision of the Court.

N. C. Chatterjee, for the Appellant.

A. V. Viswanatha Shastri, for the Respondent.

G.R. *Appeal remanded.*

[SUPREME COURT].

B.P. Sinha, C.J., P.B. Gajendragadkar, K. Subba Rao, K.C. Das Gupta and J. C. Shah, JJ.
20th November, 1959.

All India S.M.'s and A.S.M.'s Assn. *v.* Genl. Manager, C. Rly.
Petition No. 126 of 1958.

Constitution of India (1950), *Article* 16 (1)—*Scope.*

" The channel of promotion for guards to higher grade Station-masters' posts as published by the General Manager, Central Railway, under a Notification did not violate the fundamental right of the petitioner to equality of appointment. The Road-Side Station-masters and Guards formed two distinct and separate classes between whom there was no scope for predicating equality or inequality of opportunity in matters of promotion."

N. C. Chatterjee, for the Petitioners.

B. Sen, for the Respondent.

G.R. ——— *Petition dismissed.*

Ramaswami, J.
8th August, 1959.

Paramasiva Iyer *v.* Chinnathambi Padayachi.
S.A. No. 1084 of 1956.

Land Tenures—' Kareiyid ' system of Tanjore District—Meaning of.

Under the tenure known as ' Kareiyid ' obtaining in the District of Tanjore in the Madras State the tenants or kudivaramdars are co-sharers of the entire village, each individual tenant cultivating a specified piece of land, corresponding to his share or interest in the whole, for a definite period, decided upon by the community. There is a periodical re-distribution of the lands between the tenants so that each sharer will get a distribution of the land on the basis of productivity of the soil and not on the basis of the extent alone. (Working of Kareiyid system explained: analogy of modern concept of co-operative farming pointed out: Case-law reviewed.)

P. S. Srisailam, for Appellant.

R. Gopalaswami Ayyangar, for Respondent.

R.M. ——— *Appeal allowed.*

Balakrishna Ayyar, J.
7th September, 1959.

Shankerlal *v.* Collector of Central Excise.
W.P. No. 840 of 1958.

Constitution of India, Article 20 (3)—*Scope of—Protection under—Person summoned to appear under Sea Customs Act—If a person accused—If entitled to protection under Article* 20 (3).

Evidence Act (*I of* 1872), *section* 132—*Applicability.*

Sea Customs Act (*VIII of* 1878), *section* 171-*A—Duty of person summoned to appear before the authorities and answer all questions—Nature of proceedings under.*

The scope of protection which a witness enjoys against self-incrimination is not quite the same under Article 20 (3) of the Constitution of India as under the American Constitution. Article 20 (3) is available only in relation to a proceeding in a criminal Court and therefore the field of protection in India is narrower than in the United States of America. A person summoned to appear before the Sea Customs Authorities under section 171-A of the Sea Customs Act, 1878, is not in the position of a person accused and he is bound to appear before such authorities and answer all questions put to him. Section 132 of the Evidence Act would apply only to judicial proceedings in or before any Court. As proceedings before the Sea Customs Officers are not judicial proceedings nor do such officers constitute Courts, the section has no application to such cases.

The position in such proceedings in relation to Article 20 (3) of the Constitution and the Sea Customs Act will be as follows. (1) When the departmental offices conduct proceedings which may terminate in the confiscation of goods or the imposition of penalties which they can themselves impose, without reference to any criminal Court, such officers are not acting as Courts of law and the proceedings before them are not judicial proceedings, except for the limited purposes of sections

193 and 228, Indian Penal Code; (2) To the persons examined in such proceedings section 132 of the Evidence Act would not apply of its own force ; (3) But as they are empowered to prosecute persons for contravention of the Sea Customs Act the position of Customs Officers will in certain respects be analogous to that of police officers acting on information relating to a cognizable offence ; (4) A person who has been examined by the Customs Officers will not be in the position of an accused till it can be fairly and properly said that he is likely to be proceeded against in a criminal Court ; (5) Though the question when a person becomes an accused person would depend on the decision that the departmental officers may take, they cannot, by merely pretending that they have not made up their minds, circumvent the provisions of Article 20 (3) ; (6) Whether a witness of a suspect has become an accused person in any particular instance is substantially a question of fact.

Per Curiam.—" It is very desirable that the departmental officers, should make it plain to the person concerned at the earliest moment they can do so, whether it is intended to proceed against him in a criminal Court or not. If it is made plain that there is no intention to proceed against him in a criminal Court then no question of invoking the shield of Article 20 (3) could possibly arise, and, the person will be bound to answer all the questions put to him and, those answers can be taken into account only for imposing departmental penalties. But, if it is intended to prosecute the person concerned in a criminal Court he cannot be compelled to answer any question the answer to which is likely to incriminate him. If, nevertheless, he is forced to answer such questions the answer so obtained cannot be used in evidence against him at the trial ".

K. C. Jacob and *S. K. L. Ratan,* for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and *M. M. Ismail,* for Respondent.

R.M. ——— *Petition dismissed.*

Subrahmanyam, J. Chellaperumal Chetty *v.* Jayarathnam Chettiar.
10th September, 1959. S.A. No. 8 of 1958.

Promissory-note—Chit-fund transaction—Promissory note executed by a subscriber-bidder for future instalments—If enforceable as a negotiable instrument.

In cases where a subscriber to a chit-fund transaction purchases the chit and executes a promissory note in favour of the company for the future instalments payable by him, it is not correct to say that the promissory note is only a security and is unenforceable as such. The true legal position is that the liability of the subscriber to pay the amount in instalments for a specified period is converted into a liability to pay under the promissory note. At this stage the relationship between the chit-fund and the subscriber is only that of a creditor and debtor. The liability to pay the amount is only under the promissory note though there is usually a tacit understanding that the promissory note would be deemed to be discharged if the subscriber pays the future instalments periodically for the entire period agreed upon. There is no bar to the enforcement of the liability under the promissory note as such.

R. Narasimhachari and *N. Varadarajan,* for Appellant.

D. Ramaswami Ayyangar and *C. Krishnamachariar,* for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopala Ayyangar, J. Periaswami Gounder *v.* Erode Municipality.
14th September, 1959. W.P. Nos. 830 and 831 of 1958.

Madras District Muncipalities Act (*V of* 1925), *sections* 13-*A* (*a*), 22 *and* 36—*Cumulative effect of—Duty of Executive Authority to give effect to every resolution of Council—Scope of.*

Under sections 13-A (*a*) and 22 of the Madras District Muncipalities Act it is the duty of the executive authority of a Municipal Council to carry into effect every

resolution of the Council unless the same is modified, cancelled or suspended by the Controlling Authority. Such a power of suspension is vested only in the State Government and the function of the executive authority (Commissioner) is only to draw the attention of the Government to the invalidity of the resolution, if any. The Commissioner cannot refuse to give effect to any resolution, which is a statutory duty cast on him, merely on the ground that in his opinion the resolution is invalid or *ultra vires*. The combined effect of section 13-A and 22 read with section 36 of the Act is that the Commissioner of Municipality is not vested with any power to refuse to carry out the resolution of the Council.

V. S. Subrahmanyam, for Petitioner.

B. V. Viswanatha Ayyar, S. Mohan Kumaramangalam, K. V. Sankaran and *S. Sethuraman*, for Respondents.

R.M. ——— *Petition allowed*.

Rajagopala Ayyangar, J. Associated Cement Co. *v.* Labour Court, Coimbatore.
15th September, 1959. W.P. No. 284 of 1958.

Minimum Wages Act (XI of 1948) and Rules, Rule 23—Scope of—If provides for payment of wages even for weekly holidays.

Rule 23 of the Rules framed under the Minimum Wages Act only provides that unless the conditions laid down therein are satisfied, *viz.*, permission from Central Government being obtained and compensatory holiday being given, no worker in a scheduled employment should be required to work on the first day of the week, *viz.*, Sunday. The rule does not mean that an employer should pay wages even for the weekly holidays, generally Sundays on which the workers were not required or allowed to work.

M. K. Nambiyar, K. P. Adiga and *K. K. Venugopal*, for Petitioner.

The Government Pleader (*K. Veeraswami*) and The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Ananthanarayanan, J. Sivaguru *v.* Saroja.
18th September, 1959. A.A.O. No. 327 of 1958.

Hindu Marriage Act (XXV of 1955), section 12 (1) (d) and (2)—Annulment of marriage on the ground of concealed pregnancy of the spouse at the time of the marriage—Burden of proof.

The ground on which a petitioner is entitled to seek the annulment of marriage under section 12 (1) (*d*) of the Hindu Marriage Act, 1955, *viz.*, on the ground that the respondent was pregnant at the time of marriage by some person other than the petitioner is based on a species of fraud perpetrated by the spouse which would invalidate the marriage. Hence it is for the petitioner who seeks annulment to establish the fraud and show that all the conditions laid down by section 12 (2) are also satisfied. It is not enough for the petitioner merely to show the existence of pregnancy *per alium* at the time of the marriage. He must also show that he was ignorant of the fact and also satisfy the Court that he did not have marital intercourse with the wife subsequent to the time when he had grounds for reasonably inferring the cause for annulment. No part of the onus lies on or sifts to the respondent in such cases.

Nature of evidenceand their appreciation, value of probabilities, etc., explained.

T. M. Kasturi and *C. Devarajan*, for Appellant.

Md. Asker Ali, for Respondent.

R.M. ——— *Appeal dismissed*.

Balakrishna Ayyar, J. Ramachandra Naidu *v.* State
1st October, 1959. W.P. No. 236 of 1959.

Constitution of India, Article 311 (2)—*Reasonable opportunity—What amounts to—Scope of investigation by Court—Scope of interference by High Court under Article* 226.

It is is now well established that before holding that the test as to reasonable opportunity in an enquiry against a Government servant under Article 311 (2) of the Constitution of India has been satisfied it should be established that the enquiry has been conducted objectively and dispassionately, that the person proceeded against has been given reasonable opportunity to scrutinise the evidence against him, to cross-examine witnesses who support the charge against him and produce his own evidence. Further the finding should be reasonably related to the evidence, *viz.*, that there should be at least some little evidence on which the conclusion can rest. In addition to all these the charges framed against the person should have a reasonable definiteness about it so as to enable the person charged to rebut it.

V. Vedantachari, for Petitioner.

R. G. Rajan, for the Additional Government Pleader (*M. M. Ismail*) for Respondent.

R.M. *Rule absolute.*

Rajagopalan and Ramachandra Iyer, JJ. Sreenivas & Co. *v.*
16th October, 1959. D.C.T.O. Moore Market Division.
W.A. No. 15 of 1958.

Madras General Sales-tax Act (*IX of* 1939)—*Turnover and Assessment Rules* (1955), *Rules* 15 *and* 16—*Taxing of sales in hides and skins—Validity—If repugnant to Article* 286 (3) *of the Constitution.*

Constitution of India, Article 286 (3)—*Law imposing a tax—Meaning of—If includes subordinate legislation.*

A taxing enactment generally contains provisions regarding levy, assessment and recovery of the tax. Under the scheme of levy of sales-tax there is also a provision by which the transaction or transactions which attract tax liability is specified, *viz.*, whether the tax is at a single point or multipoint. Thus Rule 16 of the Turnover and Assessment Rules framed under the Madras General Sales-tax Act, is an important element in the tax liability and should, therefore be considered as an integral part of the charging provisions. It would, therefore, be part of the law imposing a tax. But that does not mean that the rule is invalid for want of assent of the President under Article 286 (3) of the Constitution.

(Scheme of Act and Rules explained).

It is no doubt true that the expression 'law imposing a tax' in Article 286 (3) of the Constitution of India cannot be given a limited meaning as under the Australian Constitution and the decisions of the Australian Courts as to the interpretation of the words cannot be of guidance in the interpretation of those words in Article 286 (3) of the Constitution of India.

But the restriction imposed by Article 286 (3) of the Constitution is only with respect to the law imposing sales-tax by the legislation of a State. It does not apply to subordinate legislation like Rules 15 and 16 of the Turnover and Assessment Rules under the Madras General Sales-tax Act. Hence those Rules, though they may amount to a charging provision, cannot by themselves be held to be a law of the State Legislature imposing a tax. As the original Act was passed long prior to the Constitution and did not require the President's assent under Article 286 (3) of the Constitution any subordinate or delegated legislation which should be deemed to be part of the original Act, should not require such assent.

(Difference between pre-Constitution and post-Constitution Acts levying sales tax pointed out).

Rules 15 and 16 of the Turnover and Assessment Rules, 1955, being only subordinate legislation though imposing a tax in regard to an essential commodity governed by Act LII of 1952 could not be said to be a law passed by the State Legislature imposing a tax after the Constitution came into force and therefore there was no necessity to reserve it for consideration and assent of the President for their validity.

Messrs. Sundararajan and Sivaswami, for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Additional Government Pleader (*M. M. Ismail*) for Respondent.

R.M. *Appeal dismissed.*

Rajagopalan and Ramachandra Iyer, JJ.
26*th October*, 1959.

C. I. T., Madras *v.*
Sri Rama Vilas Service.
T.C. No. 68 of 1958.

Income-tax Act (*XI of* 1922), *sections* 10 (5), 10 (2) (*vi*) (*a*) *and* (*b*)—'*Machinery installed*'—*If would include lorries and buses—Right to development rebate in respect of such vehicles.*

The word 'installed' in relation to any machinery or plant must be construed to mean such installation as that plant or machinery is capable of. A bus or lorry purchased by an assessee and put on road in the course of the business which he carried on, will certainly satisfy the test of installation of such vehicles, whch are also 'plant' within the meaning of section 10 (5) of the Income-tax Act. The expression 'plant or machinery installed' should be given the same meaning in both sub-clauses (*a*) and (*b*) of section 10 (2) (*vi*) of the Act. The word 'installed' has to be given its normal meaning and does not necessarily connote something fixed to the earth or immoveable. Hence an assessee will be entitled to claim development rebate in respect of such vehicles.

(1959) 36 I.T.R. 580, followed.

C. S. Rama Rao Sahib, for Applicant.

V. Sethuraman, for Respondent.

R.M. *Answer accordingly in favour of assessee.*

Ramachandra Iyer, J.
20*th November*, 1959.

Viswanatha Pillai *v.*
Indian Overseas Bank, Ltd.
C.M.P. No. 6043 of 1959.

Practice—Stay of execution of decree pending an appeal against order refusing to set aside ex parte *decree—Powers of appellate Court.*

Civil Procedure Code, Order 43, *rule* (1) (d)—*Refusal to set aside* ex parte *decree—Appeal from—Power of appellate Court to stay execution of decree.*

In an appeal against an order refusing to set aside an *ex parte* decree it is open to the appellate Court to stay the execution of the *ex parte* decree itself, even though no appeal is filed against the said decree.

I.L.R. 58 Mad. 116, referred.

31 Cal. 1081 : 35 I.C. 443 and A.I.R. (1942) Pat. 146, differed.

C. S. Rajappa, for Petitioner.

C. C. Thambi, for Respondent.

R.M. *Stay granted.*

[END OF VOLUME (1959) 2 M.L.J. (N.R.C.)]